28 Am. Jur. 2d Estoppel and Waiver One I Refs.

American Jurisprudence, Second Edition | May 2021 Update

Estoppel and Waiver
Romualdo P. Eclavea, J.D.; Eric C. Surette, J.D.

Part One. Estoppel

I. In General

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West's Key Number Digest

West's Key Number Digest, Estoppel 1, 52(1) to 52(8)

A.L.R. Library

A.L.R. Index, Collateral Estoppel
A.L.R. Index, Equitable Estoppel
A.L.R. Index, Estoppel and Waiver
A.L.R. Index, Promissory Estoppel
West's A.L.R. Digest, Estoppel 1, 52(1) to 52(8)

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28 Am. Jur. 2d Estoppel and Waiver § 1

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Estoppel and Waiver
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Part One. Estoppel

I. In General

§ 1. Generally; basis, nature, and purpose of estoppel

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Estoppel 1, 52(1) to 52(8)

A.L.R. Library

Applicability of waiver or estoppel to preclude claim of nonconformance of documents as ground for dishonor of presentment under letter of credit under U.C.C. sec. 5-114, 53 A.L.R.5th 667

Estoppel is a judicial doctrine sounding in equity,[1] founded in the fundamental duty of fair dealing imposed by law;[2] it has its roots in equity and stems from the voluntary conduct of a party whereby he or she is absolutely precluded, both at law and in equity, from asserting rights that might perhaps have otherwise existed.[3] The application of estoppel depends on the facts and circumstances of each case.[4]

The doctrine of estoppel springs from equitable principles and the equities in the case,[5] and the doctrine is invoked to prevent injustice,[6] as well as promote the ends of justice.[7] The doctrine of estoppel is based upon the grounds of public policy, fair dealing, good faith, and justice.[8] It is invoked in the interests of justice, morality, and common fairness.[9] The doctrine also stands for the basic precepts of common honesty, clear fairness, and good conscience.[10] Estoppel is an equitable remedy that the courts may invoke to prevent a party from benefiting from its misconduct;[11] it is designed to prevent one party from suffering gross wrong at the hands of another party who has brought about the condition.[12] The doctrine of estoppel is designed to prevent injustice by not permitting a party to repudiate a course of action on which another party has relied to his or her detriment.[13]

The purpose of the doctrine is to forbid one to speak against his or her own act representations or commitments to the injury of one to whom they were directed and who reasonably relied thereon.[14] The purpose of estoppel is to protect those who have been misled by that which upon its face was fair[15] or those who have been misled by false and inconsistent statements.[16] The doctrine should always be so applied as to promote the ends of justice and accomplish that which ought to be done.[17] Estoppel is imposed by law in the interest of fairness to prevent the enforcement of rights that would work fraud or injustice upon the person against whom enforcement is sought and who, in justifiable reliance upon the opposing party's words or conduct, has been misled into acting upon the belief that such enforcement would not be sought.[18] Estoppel generally prevents one party from misleading another to the other's detriment or to the misleading party's own benefit;[19] thus, estoppel will be applied against a party who, by his or her words or conduct, takes positions inconsistent with his or her rights, unfairly misleading others into detrimental reliance.[20] Estoppel arises apart from any intention on the part of the one estopped.[21] Estoppel is an equitable doctrine whereby one's own acts or conduct prevent the claiming of a right to the detriment of another party who was entitled to and did rely on the conduct.[22]

A hallmark of the doctrine of estoppel is its flexible application.[23] Estoppel is a flexible doctrine that manifests itself in various forms that are not limited to unilateral requests.[24]

Estoppel is a defensive theory barring parties from asserting a claim or a defense where their representations have induced action or the forbearance of a definite and substantial character, and injustice can be avoided only by its enforcement.[25]

Although estoppel is sometimes said to be a mere rule of evidence, it is in reality one of substantive law for the reason that it absolutely precludes a person from asserting what otherwise would be his or her right.[26]

CUMULATIVE SUPPLEMENT

Cases:

Equitable estoppel may be raised under federal and state law either as an affirmative defense or to prevent another party from raising an affirmative defense. Long v. JP Morgan Chase Bank, Nat. Ass'n, 848 F. Supp. 2d 1166 (D. Haw. 2012).

[END OF SUPPLEMENT]

Footnotes

1 Valencia Energy Co. v. Arizona Dept. of Revenue, 191 Ariz. 565, 959 P.2d 1256 (1998).

2 Knorr v. Smeal, 178 N.J. 169, 836 A.2d 794 (2003).

3 C.R. Klewin Northeast, LLC v. City of Bridgeport, 282 Conn. 54, 919 A.2d 1002 (2007).

4 Patrick v. Christopher East Health Care, 142 S.W.3d 149 (Ky. 2004), as corrected, (Aug. 27, 2004).

5 General American Life Ins. Co. v. AmSouth Bank, 100 F.3d 893, 31 U.C.C. Rep. Serv. 2d 482 (11th Cir. 1996) (applying Alabama law); Hilco Property Services, Inc. v. U.S., 929 F. Supp. 526 (D.N.H. 1996); Holland Group, Inc. v. North Carolina Dept. of Admin., State Const. Office, 130 N.C. App. 721, 504 S.E.2d 300 (1998); State v. Fleming, 181 Wis. 2d 546, 510 N.W.2d 837 (Ct. App. 1993).

6 Lago & Sons Dairy, Inc. v. H.P. Hood, Inc., 892 F. Supp. 325 (D.N.H. 1995); In re McKenzie, 225 B.R. 377 (N.D. Ohio 1998); Baldwin v. Wolff, 294 Ill. App. 3d 373, 228 Ill. Dec. 873, 690 N.E.2d 632 (1st Dist.

1998); Jean Maby H. v. Joseph H., 246 A.D.2d 282, 676 N.Y.S.2d 677 (2d Dep't 1998); Carter v. Schuster, 2009 OK 94, 227 P.3d 149 (Okla. 2009), as corrected, (Dec. 18, 2009) and as corrected, (Dec. 22, 2009).

7 Doe v. Archdiocese of Cincinnati, 116 Ohio St. 3d 538, 2008-Ohio-67, 880 N.E.2d 892 (2008); First State Bank v. Diamond Plastics Corp., 1995 OK 21, 891 P.2d 1262, 26 U.C.C. Rep. Serv. 2d 443, 53 A.L.R.5th 905 (Okla. 1995).

8 In re Ionosphere Clubs, Inc., 85 F.3d 992 (2d Cir. 1996); Hilco Property Services, Inc. v. U.S., 929 F. Supp. 526 (D.N.H. 1996); Hubble v. O'Connor, 291 Ill. App. 3d 974, 225 Ill. Dec. 825, 684 N.E.2d 816 (1st Dist. 1997); Billings Post No. 1634 v. Montana Dept. of Revenue, 284 Mont. 84, 943 P.2d 517 (1997); In re Loomis, 1998 SD 113, 587 N.W.2d 427 (S.D. 1998); Vermont Yankee Nuclear Power Corp. v. Department of Taxes, 187 Vt. 431, 2010 VT 24, 996 A.2d 186 (2010).

9 Knorr v. Smeal, 178 N.J. 169, 836 A.2d 794 (2003).

10 Omega Industries, Inc. v. Raffaele, 894 F. Supp. 1425 (D. Nev. 1995).

11 Zurich American Ins. Co. v. Journey Operating, LLC, 323 S.W.3d 696 (Ky. 2010).

12 Kelly v. Wallace, 1998 MT 307, 292 Mont. 129, 972 P.2d 1117 (1998).

13 Knorr v. Smeal, 178 N.J. 169, 836 A.2d 794 (2003).

14 Vermont Yankee Nuclear Power Corp. v. Department of Taxes, 187 Vt. 431, 2010 VT 24, 996 A.2d 186 (2010).

15 Inimitable Group, L.P. v. Westwood Group Development II, Ltd., 264 S.W.3d 892 (Tex. App. Fort Worth 2008).

16 Robinson v. Robinson, 961 S.W.2d 292 (Tex. App. Houston 1st Dist. 1997).

17 Hilco Property Services, Inc. v. U.S., 929 F. Supp. 526 (D.N.H. 1996); Jefferson Place Condominium Assn. v. Naples, 125 Ohio App. 3d 394, 708 N.E.2d 771 (7th Dist. Mahoning County 1998).

18 Fundamental Portfolio Advisors, Inc. v. Tocqueville Asset Management, L.P., 7 N.Y.3d 96, 817 N.Y.S.2d 606, 850 N.E.2d 653 (2006).

19 Ulico Cas. Co. v. Allied Pilots Ass'n, 262 S.W.3d 773 (Tex. 2008).

20 Wilcox v. Vermeulen, 2010 SD 29, 781 N.W.2d 464 (S.D. 2010).

21 Sanders v. Gravel Products, Inc., 2008 ND 161, 755 N.W.2d 826 (N.D. 2008).

22 Matter of Edwards, 694 N.E.2d 701 (Ind. 1998); Hilfiger v. Transamerica Occidental Life Ins. Co., 256 Va. 265, 505 S.E.2d 190 (1998).

23 Heckler v. Community Health Services of Crawford County, Inc., 467 U.S. 51, 104 S. Ct. 2218, 81 L. Ed. 2d 42 (1984).

24 Murray v. State, 302 S.W.3d 874 (Tex. Crim. App. 2009).

25 Perry Homes v. Cull, 258 S.W.3d 580 (Tex. 2008), cert. denied, 129 S. Ct. 952, 173 L. Ed. 2d 116 (2009).

26 Readco, Inc. v. Marine Midland Bank, 81 F.3d 295 (2d Cir. 1996) (applying New York law); Chrysler Credit Corp. v. Bert Cote's L/A Auto Sales, Inc., 1998 ME 53, 707 A.2d 1311 (Me. 1998).

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28 Am. Jur. 2d Estoppel and Waiver § 2

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Estoppel and Waiver
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Part One. Estoppel

I. In General

§ 2. Definitions; requisites or elements

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Estoppel 1, 52(1), 52(4), 52(5)

Estoppel is the preclusion, by acts or conduct, from asserting a right that might otherwise have existed to the detriment and prejudice of another, who, in reliance on such acts and conduct, has acted thereon.[1] The essence of an estoppel is that the party to be estopped has by false language or conduct led another to do that which he or she would not otherwise have done and as a result thereof he or she has suffered injury.[2] Also, the essence of estoppel is that a party who takes a position that the other party relies and acts upon should not be permitted to take a contrary position in litigation to the detriment of the other party who acted in good-faith reliance on the earlier position.[3] Estoppel may arise although there has been no designed fraud on the part of the person sought to be estopped.[4]

The courts in various jurisdictions have expressed the view that an estoppel claim requires certain essential elements or circumstances and have held accordingly that in order to constitute estoppel—

— the party must do or say something that is intended or calculated to induce another to believe in the existence of certain facts and to act upon that belief, and the other party, influenced thereby, must have actually changed his or her position or must have done some act to his or her injury that he or she otherwise would not have done.[5]

— (1) there must be a representation intended to induce reliance on the part of a person to whom the representation is made; (2) an act or omission by that person in reasonable reliance on the representation; and (3) detriment as a consequence of the act or omission.[6]

— there must be an affirmative representation on the part of the person against whom the estoppel is claimed that is directed to another for the purpose of inducing the other to act or fail to act in reliance thereon, and such representation or conduct must in fact induce the other to act or fail to act to his or her injury.[7]

— there must have been some act or conduct upon the part of the party to be estopped, which has in some manner misled the party in whose favor the estoppel is sought and has caused such party to part with something of value or do some other act relying upon the conduct of the party to be estopped, thus creating a condition that would make it inequitable to allow the guilty party to claim what would otherwise be his or her legal rights.[8]

— (1) the party to be estopped must know the facts; (2) the party being estopped must intend that his or her conduct shall be acted upon or the acts must be such that the party asserting estoppel has a right to believe that it is so intended; (3) the party asserting estoppel must be ignorant of the true facts; and (4) the party asserting estoppel must rely to his or her detriment on the estopped party's former conduct.[9]

An essential element of estoppel is that the adverse party must have relied upon the conduct or representation of the other and thereby has been prejudiced or induced to change his or her position for the worse.[10] In the absence of evidence that a party was misled by another's conduct or that the party significantly and justifiably relied on that conduct to its disadvantage, an essential element of estoppel is lacking.[11] Estoppel requires an act on the part of the one intended to influence the other and detrimental reliance upon that act by the other.[12] Indeed, the key element of an estoppel is intentionally induced prejudicial reliance.[13] The reliance of the party seeking the benefit of estoppel must have been reasonable.[14] Reliance upon an alleged representation or concealment is unreasonable when the party asserting estoppel, at the time of his or her reliance or at the time of the representation or concealment, knew or should have known that the conduct or representation was either improper, materially incorrect, or misleading.[15] Intent is relevant to equity, but the absence of an intent will not immunize a party from a determination that its conduct was inequitable; what matters is the reasonableness of the reliance placed on the conduct of the party against which estoppel is sought, not the mental state of the offending party.[16] Absent a confidential relationship, one asserting estoppel must show that in relying on the alleged misrepresentation, he or she acted as a reasonably prudent person would act and was not guilty of negligence or carelessness.[17]

The party arguing estoppel must not know the real facts[18] and change his or her position in reliance on the estopped party's representations.[19] While wrongful or unconscionable conduct is generally an element of estoppel, an estoppel may arise even where there is no intent to mislead if the actions of one party cause a prejudicial change in the conduct of the other.[20]

Footnotes

1 Waters-Haskins v. New Mexico Human Services Dept., Income Support Div., 2009-NMSC-031, 146 N.M. 391, 210 P.3d 817 (2009).

2 Steinhart v. County of Los Angeles, 47 Cal. 4th 1298, 104 Cal. Rptr. 3d 195, 223 P.3d 57 (2010).

3 Sheldon v. Kansas Public Employees Retirement System, 40 Kan. App. 2d 75, 189 P.3d 554 (2008).

4 Lantzy v. Centex Homes, 31 Cal. 4th 363, 2 Cal. Rptr. 3d 655, 73 P.3d 517 (2003), as modified, (Aug. 27, 2003).

5 O'Connor v. City of Waterbury, 286 Conn. 732, 945 A.2d 936 (2008).

6 Anzalone v. Administrative Office of Trial Court, 457 Mass. 647, 932 N.E.2d 774 (2010).

7 Waterman v. Caprio, 983 A.2d 841 (R.I. 2009).

8 Wilcox v. Vermeulen, 2010 SD 29, 781 N.W.2d 464 (S.D. 2010).

9 Cold Brook Fire Dist. v. Adams, 183 Vt. 614, 2008 VT 28, 950 A.2d 1206 (2008).

10 Hinshaw v. Hinshaw, 237 S.W.3d 170 (Ky. 2007).

11 Fundamental Portfolio Advisors, Inc. v. Tocqueville Asset Management, L.P., 7 N.Y.3d 96, 817 N.Y.S.2d 606, 850 N.E.2d 653 (2006).

12 Robinson v. Boyd, 288 Ga. 53, 701 S.E.2d 165 (2010).

13 Waterman v. Caprio, 983 A.2d 841 (R.I. 2009).

14 Morton Street LLC v. Sheriff of Suffolk County, 453 Mass. 485, 903 N.E.2d 194 (2009).

15 Kierstead v. State Farm Fire and Cas. Co., 160 N.H. 681, 7 A.3d 1268 (2010).

16 Glew v. Ohio Sav. Bank, 2007 UT 56, 181 P.3d 791 (Utah 2007), as supplemented, (Feb. 22, 2008).

17 Steinhart v. County of Los Angeles, 47 Cal. 4th 1298, 104 Cal. Rptr. 3d 195, 223 P.3d 57 (2010).

18 Blea v. Fields, 2005-NMSC-029, 138 N.M. 348, 120 P.3d 430 (2005).

19 PMA Group v. Trotter, 281 Kan. 1344, 135 P.3d 1244 (2006); Blea v. Fields, 2005-NMSC-029, 138 N.M. 348, 120 P.3d 430 (2005).

20 Creveling v. Government Employees Ins. Co., 376 Md. 72, 828 A.2d 229 (2003).

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Estoppel and Waiver
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Part One. Estoppel

I. In General

§ 3. Limitations of doctrine; attitude and policy of courts

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Estoppel 1, 52(1) to 52(8)

Inasmuch as the doctrine of estoppel operates to prevent showing the truth,[1] estoppel has often been characterized as not favored under the law.[2] Generally, the law particularly disfavors estoppels where the party attempting to raise the estoppel is represented by an attorney-at-law.[3] Although not generally favored, estoppel will be found to prevent a party from taking an unconscionable advantage of his or her own wrong while asserting his or her strict legal right.[4]

The doctrine of estoppel is to be applied rarely[5] and only from necessity.[6] The doctrine of estoppel should be applied cautiously, only when equity clearly requires that it be done.[7] Estoppel will not be invoked lightly[8] but only in extraordinary circumstances[9] where the equities clearly are balanced in favor of the party seeking relief.[10] The doctrine of estoppel is not applied except where refusing it would be inequitable.[11] Estoppel is a doctrine of last resort.[12]

Estoppel should be resorted to solely as a means of preventing injustice[13] and should not be permitted to defeat the administration of the law,[14] or to accomplish a wrong or secure an undue advantage,[15] or to extend beyond the requirements of the transactions in which they originate.[16] Indeed, estoppel should not be given effect beyond what is necessary to accomplish justice between the parties.[17] The doctrine of estoppel when misapplied may be a most effective weapon for the accomplishment of injustice.[18]

Estoppels are as readily and fully recognized in courts of law as in courts of equity.[19] The application of estoppel lies within the sound discretion of the trial court;[20] however, estoppel will be sustained or applied only upon clear and convincing evidence.[21]

Equitable doctrines such as estoppel serve to moderate the unjust results that would follow from the unbending application of common-law rules and statutes.[22] However, not even estoppel can legalize or vitalize that which the law declares unlawful and void.[23]

An estoppel cannot arise where the party claiming estoppel is equally negligent or at fault.[24] Where both parties can determine the law and have knowledge of the underlying facts, estoppel cannot lie.[25] Estoppel cannot be the basis of title to land since estoppels are defensive rather than creative.[26]

CUMULATIVE SUPPLEMENT

Cases:

Estoppel is not appropriate when allowing a deviation from the law in a particular case would cause confusion in the processing of cases by different litigants or when it would thwart public policy. People v. Ford, 61 Cal. 4th 282, 187 Cal. Rptr. 3d 919, 349 P.3d 98 (2015).

[END OF SUPPLEMENT]

Footnotes

1 Anderson v. Cox, 977 F. Supp. 413 (W.D. Va. 1997); Blais v. Allied Exterminating Co., 198 W. Va. 674, 482 S.E.2d 659 (1996).

2 Zeringue v. Wireways, Inc., 714 So. 2d 13 (La. Ct. App. 1st Cir. 1998), writ denied, 721 So. 2d 475 (La. 1998); McElligott v. Lukes, 42 Mass. App. Ct. 61, 674 N.E.2d 1108 (1997); Investors Title Co. v. Chicago Title Ins. Co., 983 S.W.2d 533 (Mo. Ct. App. E.D. 1998); Bruner v. Yellowstone County, 272 Mont. 261, 900 P.2d 901 (1995); Patterson v. Horton, 84 Wash. App. 531, 929 P.2d 1125 (Div. 2 1997).

3 Steinhart v. County of Los Angeles, 47 Cal. 4th 1298, 104 Cal. Rptr. 3d 195, 223 P.3d 57 (2010).

4 Avanta Federal Credit Union v. Shupak, 2009 MT 458, 354 Mont. 372, 223 P.3d 863, 70 U.C.C. Rep. Serv. 2d 653 (2009).

5 Anderson v. Cox, 977 F. Supp. 413 (W.D. Va. 1997); Blais v. Allied Exterminating Co., 198 W. Va. 674, 482 S.E.2d 659 (1996).

6 Blais v. Allied Exterminating Co., 198 W. Va. 674, 482 S.E.2d 659 (1996).

7 Hudkins v. State Consol. Public Retirement Bd., 220 W. Va. 275, 647 S.E.2d 711 (2007).

8 Investors Title Co. v. Chicago Title Ins. Co., 983 S.W.2d 533 (Mo. Ct. App. E.D. 1998).

9 Anderson v. Cox, 977 F. Supp. 413 (W.D. Va. 1997); In re Vision Metals, Inc., 311 B.R. 692, 59 Fed. R. Serv. 3d 74 (Bankr. D. Del. 2004).

10 Waterman v. Caprio, 983 A.2d 841 (R.I. 2009).

11 Sullivan v. Chief Justice for Admin. and Management of Trial Court, 448 Mass. 15, 858 N.E.2d 699 (2006).

12 Commercial Nat. Bank v. Rowe, 666 So. 2d 1312 (La. Ct. App. 2d Cir. 1996).

13 Heckler v. Community Health Services of Crawford County, Inc., 467 U.S. 51, 104 S. Ct. 2218, 81 L. Ed. 2d 42 (1984); Commercial Nat. Bank v. Rowe, 666 So. 2d 1312 (La. Ct. App. 2d Cir. 1996).

14 Smith v. Smith, 265 N.C. 18, 143 S.E.2d 300 (1965).

15 Costa v. Pratt, 98 N.Y.S.2d 148 (Sup 1949), order aff'd, 277 A.D. 806, 96 N.Y.S.2d 868 (3d Dep't 1950).

16 McElligott v. Lukes, 42 Mass. App. Ct. 61, 674 N.E.2d 1108 (1997).

17 Maitland v. University of Minnesota, 43 F.3d 357, 96 Ed. Law Rep. 402 (8th Cir. 1994).

18 Smith v. Smith, 265 N.C. 18, 143 S.E.2d 300 (1965).

19 Moore v. First Sec. Cas. Co., 224 Mich. App. 370, 568 N.W.2d 841 (1997).

20 Altech Controls Corp. v. E.I.L. Instruments, Inc., 33 F. Supp. 2d 546 (S.D. Tex. 1998); Lord v. Hubbell, Inc., 210 Wis. 2d 150, 563 N.W.2d 913 (Ct. App. 1997).

21 Investors Title Co. v. Chicago Title Ins. Co., 983 S.W.2d 533 (Mo. Ct. App. E.D. 1998); Avanta Federal Credit Union v. Shupak, 2009 MT 458, 354 Mont. 372, 223 P.3d 863, 70 U.C.C. Rep. Serv. 2d 653 (2009); Patterson v. Horton, 84 Wash. App. 531, 929 P.2d 1125 (Div. 2 1997); Milas v. Labor Ass'n of Wisconsin, Inc., 214 Wis. 2d 1, 571 N.W.2d 656 (1997).

22 Powell v. City of Newton, 703 S.E.2d 723 (N.C. 2010),

23 Union County v. CGP, Inc., 277 Ga. 349, 589 S.E.2d 240 (2003).

24 Estate of McElwee v. Omaha Transit Authority, 266 Neb. 317, 664 N.W.2d 461 (2003).

25 Campbell v. State, Department of Social and Health Services, 150 Wash. 2d 881, 83 P.3d 999 (2004).

26 McRae v. SSI Development, LLC, 283 Ga. 92, 656 S.E.2d 138 (2008).

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Part One. Estoppel

I. In General

§ 4. Classification

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Estoppel 1, 52(1)

There are a number of different types of estoppel doctrines: estoppel by record, estoppel by deed,[1] collateral estoppel,[2] equitable estoppel or estoppel en pais,[3] promissory estoppel,[4] and judicial estoppel.[5] Generally, estoppels are said to be of three kinds: (1) by record, (2) by deed, and (3) by matter in pais.[6] The first two are sometimes referred to as technical estoppels as distinguished from equitable estoppels or estoppels in pais.[7] Equitable estoppel arises from matter in pais whereas estoppel by deed is based solely on a written instrument.[8] An estoppel by record is the preclusion to deny the truth of matters set forth in a record, whether judicial or legislative, and also to deny the facts adjudicated by a court of competent jurisdiction.[9] While technical estoppels are regulated by well-settled rules and admit of certain application, it would be difficult to prescribe a rule of universal application in regard to what are called estoppels in pais, depending as they do on the particular circumstances of the case.[10]

Four types of estoppel may affect rights in real property: estoppel by record, estoppel by deed, estoppel by recitals, and estoppel in pais.[11]

Footnotes

1 § 5.

2 As to collateral estoppel, generally, see Am. Jur. 2d, Judgments §§ 464 to 466.

3 § 27.

4 § 51.

5 Maitland v. University of Minnesota, 43 F.3d 357, 96 Ed. Law Rep. 402 (8th Cir. 1994).
As to judicial estoppel, see § 67.

6 Milas v. Labor Ass'n of Wisconsin, Inc., 214 Wis. 2d 1, 571 N.W.2d 656 (1997).

7 Maitland v. University of Minnesota, 43 F.3d 357, 96 Ed. Law Rep. 402 (8th Cir. 1994).

8 Blackstock v. Gribble, 312 S.W.2d 289 (Tex. Civ. App. Eastland 1958), writ refused n.r.e.

9 Watson v. Goldsmith, 205 S.C. 215, 31 S.E.2d 317 (1944).

10 Maitland v. University of Minnesota, 43 F.3d 357, 96 Ed. Law Rep. 402 (8th Cir. 1994).

11 Kellison v. McIsaac, 131 N.H. 675, 559 A.2d 834 (1989).

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28 Am. Jur. 2d Estoppel and Waiver One II A Refs.

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Part One. Estoppel

II. Estoppel by Deed or Bond

A. In General

Topic Summary | Correlation Table

Research References

West's Key Number Digest

West's Key Number Digest, Estoppel 12 to 19

A.L.R. Library

A.L.R. Index, Collateral Estoppel
A.L.R. Index, Equitable Estoppel
A.L.R. Index, Estoppel and Waiver
A.L.R. Index, Promissory Estoppel
West's A.L.R. Digest, Estoppel 12 to 19

Forms

Am. Jur. Pleading and Practice Forms, Estoppel and Waiver §§ 31, 32

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Part One. Estoppel

II. Estoppel by Deed or Bond

A. In General

1. Basic Consideration

§ 5. Generally; definition and nature

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Estoppel 12 to 19

Forms

Am. Jur. Pleading and Practice Forms, Estoppel and Waiver § 31 (Asserting estoppel by deed—General forms)
Am. Jur. Pleading and Practice Forms, Estoppel and Waiver § 32 (Passage of after-acquired title)

Estoppel by deed is a bar that precludes one party to a deed and his or her privies from asserting as against the other party and his or her privies any right or title in derogation of the deed or from denying the truth of any material facts asserted in it.[1] It is a defensive doctrine that cannot be used to create a right where none existed; rather, its function is not to create rights but to preserve them, and consequently, estoppel by deed cannot be used to confer upon the grantee a greater title than the deed would have conferred had it been effective.[2] Generally, the doctrine of estoppel by deed provides that equity will not permit a grantor, or one in privity with him or her, to assert anything in derogation of an instrument concerning an interest in real or personal property as against the grantee or his or her successors.[3] Under the doctrine of estoppel by deed, a grantor who conveys by warranty deed an interest that he or she does not then own, but later acquires, will be estopped from denying the validity of the first deed.[4]

Generally, estoppel by deed is based upon equitable considerations, and it rests upon the inequity of allowing the party estopped from asserting a contrary position.[5] The principle is that when a person has entered into a solemn engagement by deed, he or she will not be permitted to deny any matter that he or she has asserted therein for a deed is a solemn act to any part of which the law gives effect as the deliberate admission of the maker; to him or her it stands for truth, and in every situation in which he or she may be placed with respect to it, it is true as to him or her.[6] Estoppel by deed promotes the judicious policy of making certain formal documents final and conclusive evidence of their contents.[7] A person who is examining the record title to realty should be able to rely on the doctrine of estoppel by deed without the necessity of having to investigate the possibility of a personal obligation to pay a money debt that might offset the estoppel by deed.[8] The doctrine of estoppel by deed has been held to apply to leases,[9] as well as to mortgages, in some respects with particular emphasis due to the continuing nature of the relationships arising from a mortgage transaction.[10] Another important aspect of the doctrine, or one closely associated because of estoppel arising from a formal written instrument, is its relationship to liability upon various types of bonds, affecting both principals and sureties thereon.[11]

Footnotes

1 Hilco Property Services, Inc. v. U.S., 929 F. Supp. 526 (D.N.H. 1996); In re Estate of Goldstein, 293 Ill. App. 3d 700, 227 Ill. Dec. 991, 688 N.E.2d 684 (1st Dist. 1997); Gonzales v. Gonzales, 116 N.M. 838, 867 P.2d 1220 (Ct. App. 1993); Wood v. Sympson, 1992 OK 90, 833 P.2d 1239 (Okla. 1992); Bilbrey v. Smithers, 937 S.W.2d 803 (Tenn. 1996); Davidson Land Co., LLC v. Davidson, 2011 WY 29, 247 P.3d 67 (Wyo. 2011).

2 Gilstrap v. June Eisele Warren Trust, 2005 WY 21, 106 P.3d 858 (Wyo. 2005).

3 Barris v. Keswick Homes, L.L.C., 268 Va. 67, 597 S.E.2d 54 (2004).

4 Reece v. Smith, 276 Ga. 404, 577 S.E.2d 583 (2003).

5 Hilco Property Services, Inc. v. U.S., 929 F. Supp. 526 (D.N.H. 1996).

6 Hilco Property Services, Inc. v. U.S., 929 F. Supp. 526 (D.N.H. 1996).

7 McLaughlin v. Lambourn, 359 N.W.2d 370 (N.D. 1985).

8 Hilco Property Services, Inc. v. U.S., 929 F. Supp. 526 (D.N.H. 1996).

9 Southland Corp. v. Shulman, 331 F. Supp. 1024 (D. Md. 1971) (applying Maryland law).

10 Am. Jur. 2d, Mortgages §§ 3, 200 to 213, 423, 952, 1077 to 1079.

11 § 25.

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28 Am. Jur. 2d Estoppel and Waiver § 6

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Part One. Estoppel

II. Estoppel by Deed or Bond

A. In General

1. Basic Consideration

§ 6. Operation and effect

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Estoppel 12 to 19

All persons claiming through the parties estopped are equally bound by the estoppel.[1] Estoppel by deed precludes a party to the deed and also those in privity with him or her from asserting as against the other party thereto and his or her privies any right or title in derogation of the deed or from denying the truth of any material fact asserted in it.[2] An estoppel that works on an interest in land runs with the land into whose hands the land comes, and privies who are bound by such estoppel include privies in blood and estate.[3] However, an estoppel by deed is operative only between parties to the deed and their privies; strangers to the deed are not bound by, nor can they invoke, the estoppel.[4]

Footnotes

1 Zayka v. Giambro, 32 Mass. App. Ct. 748, 594 N.E.2d 894 (1992); Mau v. Schwan, 460 N.W.2d 131 (N.D. 1990); Bilbrey v. Smithers, 937 S.W.2d 803 (Tenn. 1996).

2 Kennedy Oil v. Lance Oil & Gas Company, Inc., 2006 WY 9, 126 P.3d 875 (Wyo. 2006).

3 Aguilera v. Corkill, 201 Kan. 33, 439 P.2d 93 (1968) (heirs and grantees); Duke v. Hopper, 486 S.W.2d 744 (Tenn. Ct. App. 1972).

4 Hunts Branch Coal Co., Inc. v. Canada, 599 S.W.2d 154 (Ky. 1980); Kraker v. Roll, 100 A.D.2d 424, 474 N.Y.S.2d 527 (2d Dep't 1984).
As to the effect of recitals in deeds in respect of the rights of strangers thereto, see § 21.

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Part One. Estoppel

II. Estoppel by Deed or Bond

A. In General

1. Basic Consideration

§ 7. Where conveyance is by quitclaim deed

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Estoppel 12 to 19

Subject to qualification under special factual situations,[1] it may be stated as a general principle that no estoppel arises from either making or accepting a quitclaim deed[2] except as to any right, title, or interest that the grantor may have had or claimed at the time of the conveyance.[3] Such a generalization is in full accord with the basic theory that a mere quitclaim is created where a deed is only a conveyance of the interest or title of the grantor in and to the property described, rather than of the property itself,[4] and that a quitclaim passes all the right, title, and interest that a grantor has at the time of making the deed that is capable of being transferred by deed, unless a contrary intent appears and nothing more.[5] In some jurisdictions, a quitclaim deed may give rise to estoppel by deed when the deed contains language showing that the grantor intended to convey and the grantee expected to acquire a particular estate.[6] Estoppel by deed generally is based upon the covenants contained in a warranty deed and does not, therefore, arise from a conveyance via quitclaim, although this rule is not absolute, and despite being a quitclaim in form, a conveyance may give rise to estoppel by deed when it contains language showing that the grantor intended to convey and the grantee expected to acquire a particular estate.[7]

Footnotes

1 As to the effect of a quitclaim to estop the grantor from asserting an after-acquired title, see Am. Jur. 2d, Deeds § 286.

2 North Star Terminal and Stevedore Co., Inc. v. State, 857 P.2d 335 (Alaska 1993); Harrell v. Powell, 251 N.C. 636, 112 S.E.2d 81 (1960).

3 Southeast Timberlands, Inc. v. Haiseal Timber, Inc., 224 Ga. App. 98, 479 S.E.2d 443 (1996); Harrell v. Powell, 251 N.C. 636, 112 S.E.2d 81 (1960).

4 Am. Jur. 2d, Deeds § 223.

5 Am. Jur. 2d, Deeds § 276.

6 Zayka v. Giambro, 32 Mass. App. Ct. 748, 594 N.E.2d 894 (1992); Tunnell v. Berry, 73 N.C. App. 222, 326 S.E.2d 288 (1985).

7 Kennedy Oil v. Lance Oil & Gas Company, Inc., 2006 WY 9, 126 P.3d 875 (Wyo. 2006).

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28 Am. Jur. 2d Estoppel and Waiver § 8

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II. Estoppel by Deed or Bond

A. In General

2. Requisites or Elements

§ 8. Generally

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Estoppel 12 to 19

To constitute an estoppel by deed, a distinct and precise assertion or admission of a fact is necessary.[1] Also, notice is an element of estoppel by deed.[2] Hence, an estoppel by deed or similar instrument can arise only where a party has conveyed a precise or definite legal estate or right by a solemn assurance that he or she will not be permitted to vary or to deny.[3] Such an estoppel should be certain to every intent.[4] Legal estoppel, or estoppel by deed, is determined by the intention of the parties as expressed in the deed, and whether or not legal estoppel may be applied in the given case is dependent entirely on the language used in the deed or that appears on the face of the instrument.[5] Moreover, if the party claiming the benefit of the estoppel has not been misled by the other party's deed, or recital therein, there is no estoppel.[6] In other words, estoppel by deed requires detrimental reliance on the part of the party asserting estoppel.[7] If the party seeking estoppel could have found out the truth, estoppel by deed would not apply.[8]

Footnotes

1 Equitable Royalty Corp. v. Hullet, 1952 OK 129, 206 Okla. 233, 243 P.2d 986 (1952).
2 Blevins v. Johnson County, 746 S.W.2d 678 (Tenn. 1988).
3 Equitable Royalty Corp. v. Hullet, 1952 OK 129, 206 Okla. 233, 243 P.2d 986 (1952).
4 Equitable Royalty Corp. v. Hullet, 1952 OK 129, 206 Okla. 233, 243 P.2d 986 (1952).
5 Trustees of Internal Imp. Fund v. Lobean, 127 So. 2d 98 (Fla. 1961).

6 McLaughlin v. Lambourn, 359 N.W.2d 370 (N.D. 1985).

7 Shell Oil Co. v. Trailer & Truck Repair Co., Inc., 828 F.2d 205 (3d Cir. 1987) (applying New Jersey law); American Securities Transfer, Inc. v. Pantheon Industries, Inc., 871 F. Supp. 400, 26 U.C.C. Rep. Serv. 2d 214 (D. Colo. 1994); Hilco Property Services, Inc. v. U.S., 929 F. Supp. 526 (D.N.H. 1996); Kellison v. McIsaac, 131 N.H. 675, 559 A.2d 834 (1989).

8 McLaughlin v. Lambourn, 359 N.W.2d 370 (N.D. 1985).

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28 Am. Jur. 2d Estoppel and Waiver § 9

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II. Estoppel by Deed or Bond

A. In General

2. Requisites or Elements

§ 9. Capacity of person sought to be estopped

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Estoppel 12 to 19

The general rule is that in order to work an estoppel by deed, the party to the deed sought to be estopped must be sui juris and competent to make the deed effective as a contract.[1] Where there is an entire absence of power to make a grant originally, there can be no room for an estoppel to grow up afterward.[2]

Observation:

While a grantor may lack donative capacity, subsequent grantors in the chain of title relying on and referencing the voidable deed can be estopped from denying the validity of their title.[3] Thus, where there was a question as to the capacity of an elderly grantor in executing a deed to his or her adult children, when the adult children who obtained title through the voidable deed subsequently executed deeds referencing the voidable deed, they were estopped from denying the validity of the chain of title.[4]

The doctrine of after-acquired property or estoppel by deed cannot cure a conveyance that is invalid due to lack of capacity.[5]

Footnotes

1 Starr v. Long Jim, 227 U.S. 613, 33 S. Ct. 358, 57 L. Ed. 670 (1913); French v. McMillion, 79 W. Va. 639, 91 S.E. 538 (1917).

2 Byerlyte Corp. v. City of Cleveland, 32 Ohio L. Abs. 609, 1940 WL 2976 (Ct. App. 8th Dist. Cuyahoga County 1940).

3 Hilco Property Services, Inc. v. U.S., 929 F. Supp. 526 (D.N.H. 1996).

4 Hilco Property Services, Inc. v. U.S., 929 F. Supp. 526 (D.N.H. 1996).

5 Smith v. Smith, 281 Ga. 380, 637 S.E.2d 662 (2006).
As to the doctrine of after-acquired property as a species of estoppel by deed, see § 12.

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28 Am. Jur. 2d Estoppel and Waiver § 10

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II. Estoppel by Deed or Bond

A. In General

2. Requisites or Elements

§ 10. Capacity of spouse

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Estoppel 12 to 19

An estate by entireties is incapable of dissolution by one of the owners without the consent of the other, and neither spouse alone may alienate his or her interest in the property while the other spouse lives.[1] Thus, estoppel by deed cannot apply where one spouse executes a deed purporting to convey marital property.[2] Accordingly, where a husband executes a quitclaim deed granting an easement over marital property, the deed is voidable, and the doctrine of estoppel would not make it valid.[3] However, under some circumstances, such a conveyance may be used as an estoppel after the death of the nonconsenting spouse in order to effectuate the transfer.[4] Moreover, a deed executed by a married woman without the joinder of her husband may be made effective through the operation of the doctrine of estoppel although each case must be weighed on its particular facts according to the legal and equitable principles involved and whenever the facts cry out for equitable relief that it should be granted.[5]

Footnotes

1 Ianotti v. Ciccio, 219 Conn. 36, 591 A.2d 797 (1991); Shwachman v. Meagher, 45 Mass. App. Ct. 428, 699 N.E.2d 16 (1998).

2 Shwachman v. Meagher, 45 Mass. App. Ct. 428, 699 N.E.2d 16 (1998); Daley v. Hornbaker, 325 Pa. Super. 172, 472 A.2d 703 (1984).

3 Ianotti v. Ciccio, 219 Conn. 36, 591 A.2d 797 (1991).

4 Daley v. Hornbaker, 325 Pa. Super. 172, 472 A.2d 703 (1984).

5 Southland Corp. v. Shulman, 331 F. Supp. 1024 (D. Md. 1971) (applying Maryland law); Zofnas v. Holwell, 234 So. 2d 1 (Fla. 1970).

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Part One. Estoppel

II. Estoppel by Deed or Bond

A. In General

2. Requisites or Elements

§ 11. Necessity of valid or operative conveyance or instrument

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Estoppel 12 to 19

There can be no estoppel by deed unless there is a deed.[1] Generally and ordinarily, a void deed will not work, and may not be made the basis of, an estoppel.[2] Thus, a deed that is invalid in that it is contrary to public policy or contrary to some statutory prohibition, and therefore null and void in contemplation of law, does not operate as an estoppel.[3]

However, a distinction seems to exist between deeds that are absolutely void because of an inherent and enduring illegality and those that are "invalid" in the sense that some defect renders them inoperative as deeds. A deed that is invalid in the sense that it is inoperative may nevertheless under some circumstances be held operative as a contract[4] and, where the invalidity arose from an inability under the law to convey in the attempted capacity, may be held to estop the grantor from setting up an after-acquired title to the premises that were previously attempted to be conveyed.[5] Indeed, a deed that fails to comport with statutory requirements may still give rise to an estoppel.[6]

Footnotes

1 Ecclesiastes 3:1, Inc. v. Cambridge Sav. Bank, 10 Mass. App. Ct. 377, 407 N.E.2d 1318 (1980).
Estoppel by deed did not grant title in the entire tract of land to a cotenant who allegedly entered into an oral agreement with the original owner of the other part for the sale of the original owner's interest once the original owner reacquired that interest, which was ultimately sold to the tenant who brought a partition action, where there was no effective conveyance from the original owner to the cotenant that satisfied the

statute of frauds, and the cotenant never sought to join the original owner as an indispensable party even though any oral contract would be enforceable against the original owner. Reece v. Smith, 276 Ga. 404, 577 S.E.2d 583 (2003).

2 Yaali, Ltd. v. Barnes & Noble, Inc., 269 Ga. 695, 506 S.E.2d 116 (1998).

3 Phillips v. Lowenstein, 91 Fla. 89, 107 So. 350 (1926); Swanson v. Grayson, 1925 OK 185, 109 Okla. 264, 236 P. 618 (1925).

4 Am. Jur. 2d, Deeds § 293.

5 Am. Jur. 2d, Deeds § 288.

6 Kesinger v. Logan, 113 Wash. 2d 320, 779 P.2d 263 (1989).

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28 Am. Jur. 2d Estoppel and Waiver One II B Refs.

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Research References

West's Key Number Digest

West's Key Number Digest, Estoppel 27(1), 27(2)

A.L.R. Library

A.L.R. Index, Collateral Estoppel
A.L.R. Index, Equitable Estoppel
A.L.R. Index, Estoppel and Waiver
A.L.R. Index, Promissory Estoppel
West's A.L.R. Digest, Estoppel 27(1), 27(2)

Forms

Am. Jur. Pleading and Practice Forms, Deeds §§ 9, 10

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§ 12. Generally

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Estoppel 27(1), 27(2)

A.L.R. Library

Joining in instrument as ratification of or estoppel as to prior ineffective instrument affecting real property, 7 A.L.R.2d 294

Forms

Am. Jur. Pleading and Practice Forms, Deeds § 9 (Answer—By good faith purchaser of grantee—Grantor estopped to deny delivery)

Am. Jur. Pleading and Practice Forms, Deeds § 10 (Answer—Defense—Grantor estopped to deny grantee's title—Grantor executed deed in blank as to grantee)

Estoppel by deed binds not only the grantor but also those in privity with him or her,[1] and in this connection, the heirs of the grantor and grantees of the grantor are considered in privity of title.[2]

The well-established general principle is that a grantor and his or her privies are estopped as against the grantee and those in privity with him or her from asserting anything in derogation of the grant or from denying the truth of any material facts stated in the conveyance.[3] One who assumes to convey an estate by deed will not be heard, for the purpose of defeating the title of the grantee, to say that at the time of the conveyance, he or she had no title, or that none passed by the deed, and he or she cannot deny the full operation and effect of the deed as a conveyance.[4] In other words, he or she is estopped from disputing the title granted.[5] Accordingly, where the holder of a contingent remainder conveys property to a grantee, representing that he or she holds a fee simple title and warranting title, the grantor will be estopped from claiming that the deed does not convey the contingent remainder.[6]

The rule is frequently stated in the broad language that a grantor of land with full covenants of warranty is estopped from claiming any interest in the granted premises[7] or that the grantee and his or her successors have less than the interest conveyed.[8] The principle is particularly applicable where the grantor seeks to set up an after-acquired title.[9] The grantor of a conveyance cannot say that his or her grantee had no authority to purchase or capacity to take.[10] A grantor is estopped by a deed itself from asserting fraud in its inducement as distinguished from fraud in the factum.[11] By joining in the execution of an instrument affecting real property, one may under some circumstances estop himself or herself from asserting the invalidity of a prior instrument affecting such real property.[12] Where the grantor holds a prior mortgage on the premises, he or she can assert no rights as mortgagee against his or her grantee.[13]

On the other hand, an estoppel by deed is not to be extended beyond the plain import of the terms used by the grantor, and this is true of a conveyance of any kind including a conveyance with warranty.[14] A covenant of warranty cannot enlarge the estate granted or pass by estoppel a greater estate than that expressly conveyed; thus, the conveyance of a life estate cannot be enlarged by such a covenant into a fee.[15] Moreover, a grantor may show that by subsequent acts, the title or some interest in the land has passed back to him or her.[16] Thus, estoppel by deed will not bar the grantor from subsequently reacquiring the property through adverse possession.[17]

Footnotes

1 Yaali, Ltd. v. Barnes & Noble, Inc., 269 Ga. 695, 506 S.E.2d 116 (1998); Bilbrey v. Smithers, 937 S.W.2d 803 (Tenn. 1996); Greenan v. Solomon, 252 Va. 50, 472 S.E.2d 54 (1996).

2 Aguilera v. Corkill, 201 Kan. 33, 439 P.2d 93 (1968).

3 Hilco Property Services, Inc. v. U.S., 929 F. Supp. 526 (D.N.H. 1996); Greenan v. Solomon, 252 Va. 50, 472 S.E.2d 54 (1996).

4 Suburban Golf Club of Elizabeth v. State Highway Commissioner, 92 N.J. Super. 125, 222 A.2d 301 (Law Div. 1966); McNary v. Reeves, 461 S.W.2d 127 (Tex. Civ. App. Texarkana 1970), writ refused n.r.e., (June 9, 1971).

5 Hilco Property Services, Inc. v. U.S., 929 F. Supp. 526 (D.N.H. 1996); Greenan v. Solomon, 252 Va. 50, 472 S.E.2d 54 (1996).

6 Goodwine State Bank v. Mullins, 253 Ill. App. 3d 980, 192 Ill. Dec. 901, 625 N.E.2d 1056 (4th Dist. 1993).

7 Kohler v. Gilbert, 216 Or. 483, 339 P.2d 1102 (1959); Body v. McDonald, 79 Wyo. 371, 334 P.2d 513 (1959).

8 Body v. McDonald, 79 Wyo. 371, 334 P.2d 513 (1959).

9 Am. Jur. 2d, Deeds §§ 277 to 290.

10 Reid v. Barry, 93 Fla. 849, 112 So. 846 (1927); Carr v. Miller, 105 Neb. 623, 181 N.W. 557 (1921).

11 Bennett v. Bennett, 137 Ky. 17, 121 S.W. 495 (1909).
Generally, as to deeds procured by fraud, see Am. Jur. 2d, Deeds §§ 167 to 171.

12 Angichiodo v. Cerami, 127 F.2d 848 (C.C.A. 5th Cir. 1942) (nonjoinder of spouse in prior deed); First Trust & Savings Bank of Pasadena v. Warden, 18 Cal. App. 2d 131, 63 P.2d 329 (2d Dist. 1936) (nonjoinder of spouse in mortgage); Hermes v. Title Guarantee & Trust Co., 282 N.Y. 88, 24 N.E.2d 859 (1939) (authority to execute mortgage); Greene v. White, 137 Tex. 361, 153 S.W.2d 575, 136 A.L.R. 626 (1941) (insufficiency of description in deed).

13 Jones v. Sturgis, 118 Colo. 579, 199 P.2d 645 (1948); Fannin Inv. & Development Co. v. Neuhaus, 427 S.W.2d 82 (Tex. Civ. App. Houston 14th Dist. 1968).

14 Wellman v. Tomblin, 140 W. Va. 342, 84 S.E.2d 617 (1954).

15 Lobean v. Trustees of Internal Imp. Fund, 118 So. 2d 226 (Fla. Dist. Ct. App. 1st Dist. 1960); Body v. McDonald, 79 Wyo. 371, 334 P.2d 513 (1959).

16 Kimball v. Anderson, 125 Ohio St. 241, 181 N.E. 17 (1932).

17 Torgerson v. Rose, 339 N.W.2d 79 (N.D. 1983).

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28 Am. Jur. 2d Estoppel and Waiver § 13

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§ 13. Conveyance in representative or fiduciary capacity

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Estoppel 27(1), 27(2)

Generally, a person who, acting in a representative capacity, executes a conveyance of land, without reservations, which purports to convey the entire property or the fee in the property, or which represents that the title is in another, is estopped from claiming in his or her individual capacity an interest in the property.[1] Thus, agents,[2] corporate officers,[3] guardians,[4] trustees,[5] and executors and administrators[6] have been held to be estopped by the execution of conveyances in the foregoing representative capacities from asserting any individual interest in property.

The rule that persons in a representative capacity are estopped from asserting an individual interest in the property is especially applicable where the conveyance executed in such representative capacity contains covenants of warranty, is a sale and conveyance of the entire estate, or where it appears that full value was received for the property including the personal interest of the party executing the conveyance.[7]

Some authorities have taken the view that a person who executes a transfer of land in a representative or fiduciary capacity is not estopped from claiming an interest in the property in his or her individual right.[8]

Footnotes

1 Cox v. Gutman, 575 S.W.2d 661 (Tex. Civ. App. El Paso 1978), writ refused n.r.e., (Apr. 4, 1979).

2 Ford v. Warner, 176 S.W. 885 (Tex. Civ. App. Amarillo 1915).

3 Mountain Home Lumber Co. v. Swartwout, 30 Idaho 559, 166 P. 271 (1917) (secretary of corporation).

4 Surtees v. Hobson, 13 S.W.2d 345 (Tex. Comm'n App. 1929).

5 Crump v. Sanders, 173 S.W. 559 (Tex. Civ. App. Texarkana 1915).

6 Cox v. Gutman, 575 S.W.2d 661 (Tex. Civ. App. El Paso 1978), writ refused n.r.e., (Apr. 4, 1979) (receiver); Black v. Beagle, 59 Wyo. 268, 139 P.2d 439, 148 A.L.R. 243 (1943).

7 Edwards v. Sarasota Venice Co., 246 F. 773 (C.C.A. 5th Cir. 1917); Rutherford v. McGee, 241 S.W. 629 (Tex. Civ. App. Fort Worth 1922).

8 Jacksonville Public Service Corporation v. Calhoun Water Co., 219 Ala. 616, 123 So. 79, 64 A.L.R. 1550 (1929).

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28 Am. Jur. 2d Estoppel and Waiver § 14

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§ 14. Conveyance with reservation or exception

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Estoppel 27(1), 27(2)

A.L.R. Library

Reservation or exception in deed in favor of stranger, 88 A.L.R.2d 1199

The fact that a grantor, in a deed given in consideration of purchase-money notes secured by a vendor's lien, has no title either to the land itself or to minerals thereon does not preclude the grantor or his or her privies from asserting, as against the grantee and his or her privies, title to the minerals, on the basis of a contract, under an express reservation thereof in the deed.[1]

However, a reservation or exception in favor of a stranger may under certain circumstances operate as an estoppel against the grantor.[2]

Footnotes

1 Greene v. White, 137 Tex. 361, 153 S.W.2d 575, 136 A.L.R. 626 (1941).

2 Butler v. Gosling, 130 Cal. 422, 62 P. 596 (1900).

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28 Am. Jur. 2d Estoppel and Waiver One II C Refs.

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Research References

West's Key Number Digest

West's Key Number Digest, Estoppel 28 to 31

A.L.R. Library

A.L.R. Index, Collateral Estoppel
A.L.R. Index, Equitable Estoppel
A.L.R. Index, Estoppel and Waiver
A.L.R. Index, Promissory Estoppel
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§ 15. Generally

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West's Key Number Digest

West's Key Number Digest, Estoppel 28 to 31

Strictly speaking, estoppel by deed does not ordinarily apply to the grantee.[1] A grantee who accepts a deed is, however, estopped in certain respects.[2] Estoppel of the grantee of a deed, viewed generally, is of the nature of equitable estoppel rather than technical estoppel by deed since the estoppel is not predicated primarily on the execution of a formal written instrument that cannot be denied or rebutted but rather on the inability of a person, in the eyes of the law, to acquiesce in, and enjoy the benefits of, a transaction and at the same time reject the accompanying burdens.[3] By acceptance of the deed, in the absence of fraud or mistake, the grantee is bound by the provisions thereof as if he or she had signed the deed.[4] A person cannot claim under an instrument without confirming it; such person must find his or her claim on the whole, and cannot adopt that feature or operation that makes it in his or her favor, and at the same time repudiate or contradict another that is counter or adverse to it.[5]

Footnotes

1 Milner v. Bivens, 255 Ga. 49, 335 S.E.2d 288 (1985); Hollabaugh v. Kolbet, 604 P.2d 1359 (Wyo. 1980). The doctrine of estoppel by deed did not apply to prevent the widow of the original cotenant of residential property from claiming that she owned more than one-half interest in the property by deed from her husband to her granting her his interest in the property, given that estoppel by deed only applies to estop a grantor from asserting an interest contrary to the deed, and the cotenant was a grantee and not a grantor. 1924 Leonard Road, L.L.C. v. Van Roekel, 272 Va. 543, 636 S.E.2d 378 (2006).

2 Haynes v. Metcalf, 297 Ark. 40, 759 S.W.2d 542 (1988); 37 Robinwood Associates v. Health Industries, Inc., 47 Ohio App. 3d 156, 547 N.E.2d 1019 (10th Dist. Franklin County 1988).

3 Leffler v. Smith, 388 So. 2d 261 (Fla. Dist. Ct. App. 5th Dist. 1980); White v. Wilks, 391 S.W.2d 260 (Mo. 1965).
Generally, as to equitable estoppel, see §§ 26 to 31.

4 Regan v. Customcraft Homes, Inc., 170 Colo. 562, 463 P.2d 463 (1970).

5 White v. Wilks, 357 S.W.2d 908 (Mo. 1962); Terry v. Brothers Inv. Co., 77 N.C. App. 1, 334 S.E.2d 469 (1985).

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§ 16. As to grantor's title

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Estoppel 29, 30

Generally, under ordinary circumstances, a grantee of property is not estopped from denying his or her grantor's title.[1] The foregoing rule in no manner conflicts with the equally well-settled principle that a mere vendee who has entered into possession under an executory contract of purchase is estopped from questioning the validity of his or her vendor's title.[2] A grantee is not ordinarily estopped from asserting a paramount title against his or her grantor or a former grantee of his or her grantor.[3] However, there are some exceptions to the rule that a grantee to a deed of conveyance is not estopped from denying the title of his or her grantor. Thus, he or she cannot refuse to pay the consideration named in his or her deed or probably to perform any other strictly personal covenants.[4] Moreover, a grantee is estopped in an action on a covenant of seisin in his or her deed from setting up his or her own title that he or she knew that he or she possessed at the time that the deed was made.[5] Where a purchaser is claiming title under a conveyance, he or she cannot deny that the grantor had the power to acquire and dispose of the land.[6]

If a grantee destroys the deed or returns it to the grantor, and requests or demands the execution of a new deed with another person as grantee, which is done, he or she is estopped from claiming under the original deed.[7]

Footnotes

1 Milner v. Bivens, 255 Ga. 49, 335 S.E.2d 288 (1985).

2 Am. Jur. 2d, Vendor and Purchaser §§ 295 to 299.

3 Kentucky River Coal Corp. v. Bayless, 318 S.W.2d 554 (Ky. 1955).

4 Chandler v. Hartt, 467 S.W.2d 629 (Tex. Civ. App. Tyler 1971), writ refused n.r.e., (Oct. 6, 1971).

5 Eames v. Armstrong, 146 N.C. 1, 59 S.E. 165 (1907).

6 McCullough v. Urquhart, 248 S.C. 348, 149 S.E.2d 909 (1966).

7 Ames v. Ames, 80 Ark. 8, 96 S.W. 144 (1906).

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§ 17. As to grantor's title—Claimants under common source of title

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Estoppel 29, 30

A.L.R. Library

Comment Note.—Common source of title doctrine, 5 A.L.R.3d 375

The general rule is that where two parties claim under the same grantor, each is estopped from denying that the grantor had title or a right to convey.[1] Where each party claims under a common source, each is estopped from attacking the title antedating the common source.[2] This rule is based on the principle that a grantee cannot deny or maintain a position inconsistent with the deed under which he or she acquires title.[3]

The generalization that claimants from a common source of title cannot question the validity of the title is, upon analysis, doubtlessly to be understood as meaning that when the plaintiff proves that he or she and the defendant claim title to land from a common source, and that of the two titles emanating from that source his or her title is the superior one, he or she shows a prima facie right to recover, which is a rule of evidence rather than of estoppel.[4] In other words, the rule is not strictly an estoppel but a rule of justice and convenience adopted by the courts to relieve persons, such as a plaintiff in ejectment, from the necessity of going back to the common source and deducing title from the State.[5] It seems clear that this doctrine is limited to cases where the only claim of title is through a common source and does not apply where a claim is asserted upon a paramount title derived from an independent source.[6]

It is the generally accepted rule that when two persons derive title from a common source, one of them is not estopped from asserting against the other a paramount title that he or she has subsequently acquired.[7]

Footnotes

1 Tallahassee Investments Corp. v. Andrews, 185 So. 2d 705 (Fla. Dist. Ct. App. 1st Dist. 1966).
As to the well-established principle in the law of ejectment that where both parties to an action claim title from the same third person, each is estopped to deny the validity of the title of such third person, and that the one having the better title derived from the common source must prevail, see Am. Jur. 2d, Ejectment § 15.

2 Coleman v. Republic Steel Corp., 280 S.W.2d 171 (Ky. 1955).

3 Tallahassee Investments Corp. v. Andrews, 185 So. 2d 705 (Fla. Dist. Ct. App. 1st Dist. 1966).

4 Sample v. Roper Lumber Co., 150 N.C. 161, 63 S.E. 731 (1909).

5 Sample v. Roper Lumber Co., 150 N.C. 161, 63 S.E. 731 (1909).

6 Kentucky River Coal Corp. v. Bayless, 318 S.W.2d 554 (Ky. 1955).

7 Philadelphia Brewing Co. v. McOwen, 76 N.J.L. 636, 73 A. 518 (N.J. Ct. Err. & App. 1909).

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C. Estoppel of Grantee and Privies

§ 18. Conveyance with reservation or exception

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Estoppel 28 to 31

A grantee and those claiming under him or her cannot, as a general rule, deny the binding authority of a reservation or exception in the deed.[1] However, a grantee and his or her successors are not estopped from denying that the grantor had title to property or to an interest with respect to which his or her deed to the grantee purported to make an exception or reservation in the grantor's favor where the one sought to be estopped shows an independent title to the property or interest.[2] Moreover, a grantee is not generally estopped from denying the efficacy of a purported reservation in favor of a stranger to the conveyance although it has been held that by his or her acceptance of the deed, the grantee is precluded from claiming for himself or herself that which was excepted in favor of a stranger.[3]

CUMULATIVE SUPPLEMENT

Cases:

When a common grantor sells lots of land based on a recorded plat showing an easement or referencing an easement in the grantee's deed, the grantor is estopped from denying the existence of the easement. Peck v. Lanier Golf Club, Inc., 315 Ga. App. 176, 726 S.E.2d 442 (2012).

[END OF SUPPLEMENT]

Footnotes

1 Terry v. Brothers Inv. Co., 77 N.C. App. 1, 334 S.E.2d 469 (1985); Alpine Const. Corp. v. Fenton, 1988 OK 123, 764 P.2d 1340 (Okla. 1988).

2 Prewitt v. Wilborn, 184 Ky. 638, 212 S.W. 442 (1919); Webber v. Austin, 123 Me. 95, 121 A. 673 (1923).

3 Am. Jur. 2d, Deeds §§ 68 to 71.

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Research References

West's Key Number Digest

West's Key Number Digest, Estoppel 22(1) to 22(3)

A.L.R. Library

A.L.R. Index, Collateral Estoppel
A.L.R. Index, Equitable Estoppel
A.L.R. Index, Estoppel and Waiver
A.L.R. Index, Promissory Estoppel
West's A.L.R. Digest, Estoppel 22(1) to 22(3)

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§ 19. Generally

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Estoppel 22(1) to 22(3)

The parties to a deed are generally estopped from denying the truth of the recitals therein.[1] However, the recitals in a deed will operate as an estoppel when they are the essence of the contract; that is, where unless the facts recited exist, it is presumed that the contract would not have been made.[2]

Footnotes

1 Yaali, Ltd. v. Barnes & Noble, Inc., 269 Ga. 695, 506 S.E.2d 116 (1998); Kellison v. McIsaac, 131 N.H. 675, 559 A.2d 834 (1989).

2 Eves v. Morgan City Fund, 252 So. 2d 770 (La. Ct. App. 1st Cir. 1971); Thompson v. Soles, 299 N.C. 484, 263 S.E.2d 599 (1980).

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§ 20. Requisites for estoppel

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Estoppel 22(1) to 22(3)

In order for a recital in a deed to operate as an estoppel, it should be free from ambiguity and certain in every respect; it is not to be taken by argument or inference, and it must be particular, material, and essential.[1] A recital that does not amount to a precise affirmation of a fact will not estop the party from denying the fact.[2]

The rule is well settled that a general recital does not operate as an estoppel.[3] A recital in a deed procured by fraud can never be used as an estoppel,[4] and a recital inserted in a deed through mistake cannot be used as an estoppel.[5]

Recitals in a deed do not operate as an estoppel when the action is not founded on the instrument or is wholly collateral to it.[6] The law is well settled that when a recital in a deed is not the foundation of the action or defense, but is invoked in some other proceeding as an item of evidence contributing toward the establishment of an estoppel, the recital is subject to explanation. It is then nothing more than an admission, and it may be shown that it was inserted by mistake.[7] If the deed is merely collateral to the purpose of the action, the recitals in it are only prima facie evidence of the facts recited and do not operate by way of estoppel.[8] On the other hand, particular recitals are generally deemed to be conclusive evidence of the facts recited, in actions in which the purpose of the deed is directly involved, and estop the parties from claiming contrary to the provisions recited therein.[9]

Footnotes

1 Gonzales v. Gonzales, 116 N.M. 838, 867 P.2d 1220 (Ct. App. 1993); Thompson v. Soles, 299 N.C. 484, 263 S.E.2d 599 (1980).

2 Haines City Citrus Growers' Ass'n v. Petteway, 107 Fla. 344, 145 So. 183 (1932).

3 Fordson Coal Co. v. Potter's Ex'rs, 237 Ky. 311, 35 S.W.2d 298 (1931).

4 Capitol Nat. Bank & Trust Co. v. David B. Roberts, Inc., 129 Conn. 194, 27 A.2d 116, 141 A.L.R. 1179 (1942).

5 English v. Holden Beach Realty Corp., 41 N.C. App. 1, 254 S.E.2d 223 (1979).

6 Virginia Elec. and Power Co. v. Buchwalter, 228 Va. 684, 325 S.E.2d 95 (1985); Kesinger v. Logan, 113 Wash. 2d 320, 779 P.2d 263 (1989).

7 Strong & MacNaughton Trust Co. v. Bodley, 141 Or. 36, 15 P.2d 470 (1932).

8 Ferguson v. Booth, 128 Tenn. 259, 160 S.W. 67 (1913).

9 Ferguson v. Booth, 128 Tenn. 259, 160 S.W. 67 (1913).

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D. Recitals

§ 21. Operation and effect of recitals

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Estoppel 22(1) to 22(3)

As a broad general rule, all parties to a deed and those claiming under them are bound by the recital of material facts in the deed.[1] A recital of one deed in another or of a fact in a deed binds the parties and those who claim under them.[2] However, the recital that the deeded property is subject to a lease does not estop the grantee from challenging the validity of the lease; the recital of another instrument in a deed will not render that other instrument valid.[3]

It is an estoppel that binds parties and privies—that is, privies in blood, privies in estate, and privies in law.[4] Accordingly, where a grantor conveyed an easement to a power company and the grantor later sold the land to the grantees, the grantees are estopped from challenging the earlier easement because they were in privity of title with the grantor of the easement.[5]

The rule is well settled that the recitals in a deed, other than an ancient deed, are not binding on a stranger.[6] On the other hand, strangers to a deed have no right to set up its recitals as estoppels.[7] This rule is even applicable in an action wholly collateral to the deed.[8]

Footnotes

1 Clark v. Cypress Shores Development Co., Inc., 516 So. 2d 622 (Ala. 1987); Furlong v. Fuller & Johnson, P.A., 492 So. 2d 421 (Fla. Dist. Ct. App. 1st Dist. 1986); Blevins v. Johnson County, 746 S.W.2d 678 (Tenn. 1988); Virginia Elec. and Power Co. v. Buchwalter, 228 Va. 684, 325 S.E.2d 95 (1985).

2 Furlong v. Fuller & Johnson, P.A., 492 So. 2d 421 (Fla. Dist. Ct. App. 1st Dist. 1986) (successors in interest are bound by an earlier deed of record).

3 McElligott v. Lukes, 42 Mass. App. Ct. 61, 674 N.E.2d 1108 (1997).

4 Yaali, Ltd. v. Barnes & Noble, Inc., 269 Ga. 695, 506 S.E.2d 116 (1998); DD & L, Inc. v. Burgess, 51 Wash. App. 329, 753 P.2d 561 (1988).

5 Virginia Elec. and Power Co. v. Buchwalter, 228 Va. 684, 325 S.E.2d 95 (1985).

6 DD & L, Inc. v. Burgess, 51 Wash. App. 329, 753 P.2d 561 (1988).

As to the rule that recitals in ancient deeds are evidence of facts recited therein, even as against strangers to the title, see Am. Jur. 2d, Evidence § 1229.

7 Uliasz v. Gillette, 357 Mass. 96, 256 N.E.2d 290 (1970); Denkmann Lumber Co. v. Morgan, 219 Miss. 692, 69 So. 2d 802 (1954).

8 Case v. Golnar, 33 Ohio App. 389, 6 Ohio L. Abs. 523, 169 N.E. 724 (6th Dist. Lucas County 1928).

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D. Recitals

§ 22. Operation and effect of recitals—On grantees

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Estoppel 22(1) to 22(3)

Generally, the recitals of fact in a deed are considered to operate by way of estoppel on the grantee.[1] However, it is only when a party is claiming title under a deed that he or she is estopped by its recitals;[2] thus, if he or she buys in an outstanding title, he or she may show that the grantors in the deed did not have the title and that he or she holds under a different, paramount title.[3] A party to a deed made to forestall litigation and buy or purchase peace is not estopped from disputing a recital in it of alleged facts.[4]

Where a recital in a deed does not bind cograntees, it follows that it does not bind the cograntees' heirs.[5]

CUMULATIVE SUPPLEMENT

Cases:

Doctrine of estoppel by deed barred lessors from denying that lease of oil and gas rights pertained to oil and gas underlying all of lessors' 62 acres, although lessors owned clear title to oil and gas underlying only 31 acres at the time of executing lease; lessors filed a motion to quiet title to the one-half interest in the oil and gas rights to property after lease was executed, ultimately perfecting their title to all of the oil and gas rights to property, and the lease described the property as "containing for the purpose of calculating rentals and royalties, 62.00 acres whether actually containing more or less." Shedden v. Anadarko E. & P. Co., L.P., 136 A.3d 485 (Pa. 2016).

[END OF SUPPLEMENT]

Footnotes

1 Clark v. Cypress Shores Development Co., Inc., 516 So. 2d 622 (Ala. 1987); 37 Robinwood Associates v. Health Industries, Inc., 47 Ohio App. 3d 156, 547 N.E.2d 1019 (10th Dist. Franklin County 1988) (tax liability).
A grantee whose deed set the southern boundary of her property as the northern edge of the road was estopped from denying the truth of the recitals in her deed and claiming an interest in the road based on a deed to the southern adjacent landowner. McRae v. SSI Development, LLC, 283 Ga. 92, 656 S.E.2d 138 (2008).

2 Waters v. Lanier, 116 Ga. App. 471, 157 S.E.2d 796 (1967).

3 Robertson v. Robertson, 61 So. 2d 499 (Fla. 1952).

4 Robertson v. Robertson, 61 So. 2d 499 (Fla. 1952).

5 Emmons v. Sanders, 217 Or. 234, 342 P.2d 125 (1959).

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D. Recitals

§ 23. Descriptive recitals

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Estoppel 22(1) to 22(3)

A party may be estopped by a description, or descriptive recital, contained in a deed.[1] A grantee who accepts a deed in good faith, which does not embrace the identical lands described in the agreement to convey, cannot afterwards dispute the same; and if a conveyance purports to be of land conveyed by a prior deed to which reference is made, the grantee cannot contend that more passed than was included in the recited deed.[2] When a piece of land is described in a deed as being on a way or a street, the grantor and his or her heirs are estopped from denying that there is a street or a way.[3] The grantor's successors in interest are similarly estopped.[4]

Footnotes

1 Richey v. Miller, 142 Tex. 274, 177 S.W.2d 255, 170 A.L.R. 832 (1944).

2 Am. Jur. 2d, Deeds § 51.

3 Uliasz v. Gillette, 357 Mass. 96, 256 N.E.2d 290 (1970); Miller v. Culpepper, 556 So. 2d 1074 (Miss. 1990).

4 Davis v. City of Valdosta, 223 Ga. 523, 156 S.E.2d 345 (1967).

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§ 24. Recital of consideration

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Estoppel 22(1) to 22(3)

As a general principle, the consideration clause in a deed of conveyance is conclusive for the purpose of giving effect to the operative words of the deed. In other words, by virtue of the recital, the grantor is estopped to deny that there was a consideration.[1] Want of consideration, in the absence of fraud, accident, or mistake, is not ordinarily a ground for canceling a deed, especially where the instrument contains a recital that the conveyance is made for a valuable consideration, such recital being deemed to effect an estoppel as against the grantor.[2] The grantor is not estopped from proving that additional consideration, beyond that recited in the deed, is called for.[3] Accordingly, a district court's decision that the quitclaim deed was void for lack of consideration was not a plain error under the doctrine of estoppel by deed, despite the language on the face of the deed that the grantor received over $75,000 as consideration for the conveyance, where the grantor claimed that he did not receive the money, a sister of the grantee admitted that the grantor was not paid at the time that he signed the deed, the deed was recorded by a stranger to the transaction, and the sister claimed that she later paid the grantor with a shoebox full of money.[4]

The recital in a deed that the consideration for it is in full for all damages that the grantor may suffer has been held to be an estoppel and a bar against his or her right later to sue for such damages.[5]

Footnotes

1 Am. Jur. 2d, Deeds § 84.

2 Am. Jur. 2d, Cancellation of Instruments § 21.

3 Shell Oil Co. v. Trailer & Truck Repair Co., Inc., 828 F.2d 205 (3d Cir. 1987).

4 West America Housing Corp. v. Pearson, 2007 WY 184, 171 P.3d 539 (Wyo. 2007).

5 Denny v. Wilson County, 198 Tenn. 677, 281 S.W.2d 671 (1955).

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D. Recitals

§ 25. Recital in bonds

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Estoppel 22(1) to 22(3)

A bond is a formal written instrument, and the recitals therein are frequently held to be operative as an estoppel, as to the material and essential facts recited, in the same manner in which recitals in a deed operate as an estoppel. The rule is well settled that the obligors in a bond—that is, the principal[1] and the sureties[2] —are estopped from denying the recitals therein. The obligor in a bond cannot contradict the recital of a particular fact recited in the instrument such as the existence of a judgment;[3] but a recital of a "generality to be done," such as the condition of payment in the bond, will not operate as an estoppel.[4] A recital or representation in a bond given by hotel lessees to secure the release of a lien thereon for repairs, that they are the owners of the hotel, estops them from denying that they are such owners for the purposes of the release and the enforcement of the lien against the bond.[5]

Footnotes

1 People ex rel. Empress Farms, Inc. v. U. S. Trotting Ass'n, 13 Ill. App. 3d 327, 300 N.E.2d 18 (4th Dist. 1973); Rogers v. King, 245 Or. 627, 423 P.2d 761 (1967).

2 Busse v. Pacific Employers Ins. Co., 43 Cal. App. 3d 558, 117 Cal. Rptr. 718 (2d Dist. 1974); People ex rel. Empress Farms, Inc. v. U. S. Trotting Ass'n, 13 Ill. App. 3d 327, 300 N.E.2d 18 (4th Dist. 1973).
As to the estoppel of sureties on a bond given to release property from attachment, see Am. Jur. 2d, Attachment and Garnishment § 516.

3 People ex rel. Empress Farms, Inc. v. U. S. Trotting Ass'n, 13 Ill. App. 3d 327, 300 N.E.2d 18 (4th Dist. 1973); Rogers v. King, 245 Or. 627, 423 P.2d 761 (1967).

4 Burnham v. Edwards, 1927 OK 179, 125 Okla. 272, 257 P. 788, 53 A.L.R. 800 (1927).

5 Rice Window Mfg. Co. v. Evans, 71 So. 2d 164 (Fla. 1954).

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28 Am. Jur. 2d Estoppel and Waiver One III A Refs.

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III. Equitable Estoppel or Estoppel in Pais

A. In General

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Research References

West's Key Number Digest

West's Key Number Digest, Estoppel 52(1) to 52.10(1)

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A.L.R. Index, Collateral Estoppel
A.L.R. Index, Equitable Estoppel
A.L.R. Index, Estoppel and Waiver
A.L.R. Index, Promissory Estoppel
West's A.L.R. Digest, Estoppel 52(1) to 52.10(1)

Forms

Am. Jur. Pleading and Practice Forms, Estoppel and Waiver § 24
Am. Jur. Pleading and Practice Forms, Pleadings § 95

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III. Equitable Estoppel or Estoppel in Pais

A. In General

1. Definitions, Purpose and Operation

§ 26. Generally

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Estoppel 52(1) to 52.10(1)

The terms "estoppel in pais" and "equitable estoppel" are generally used interchangeably as applicable to all estoppels other than those by record, deed, or bond.[1] However, such estoppels cannot be subjected to fixed and settled rules of universal application, like legal estoppels, or hampered by the narrow confines of a technical formula.[2] Each case of estoppel must in the nature of things stand on the facts and circumstances of the particular case.[3]

Equitable estoppel is not limited to claims brought in equity as it may also apply to preclude the assertion of rights and liabilities under a note or contract.[4] However, a criminal defendant may not rely on equitable estoppel to challenge a plea agreement.[5]

Quasi-contractual remedies such as equitable estoppel are inapplicable when the parties are bound by an express contract.[6]

The doctrine of equitable estoppel may be enforced in a court of law as well as in equity matters.[7] Although a party can seek equitable estoppel in both legal and equitable actions, as its name implies, it is a judicial doctrine that is equitable in nature.[8]

CUMULATIVE SUPPLEMENT

Cases:

Generally, application of equitable estoppel is reserved for instances of wrongdoing by the estopped party. Salt Lake City Corp. v. Big Ditch Irr. Co., 2011 UT 33, 258 P.3d 539 (Utah 2011).

[END OF SUPPLEMENT]

Footnotes

1 Cottle Enterprises, Inc. v. Town of Farmington, 1997 ME 78, 693 A.2d 330 (Me. 1997); Milas v. Labor Ass'n of Wisconsin, Inc., 214 Wis. 2d 1, 571 N.W.2d 656 (1997).

2 Dalton Highway Dist. of Kootenai County v. Sowder, 88 Idaho 556, 401 P.2d 813 (1965).

3 Armco, Inc. v. Reliance Nat. Ins. Co., 19 F. Supp. 2d 807 (S.D. Ohio 1998); Sullivan v. Wolf Creek Collieries, 294 S.W.3d 474 (Ky. Ct. App. 2009).
Seal v. Giant Food, Inc., 116 Md. App. 87, 695 A.2d 597 (1997); Leader Natl. Ins. Co. v. Eaton, 119 Ohio App. 3d 688, 696 N.E.2d 236 (8th Dist. Cuyahoga County 1997); In Interest of Moragas, 972 S.W.2d 86 (Tex. App. Texarkana 1998); B-F Drilling, Inc. v. State ex rel. Wyoming Workers' Safety and Compensation Div., 942 P.2d 392 (Wyo. 1997).

4 Walters v. National Properties, LLC, 2005 WI 87, 282 Wis. 2d 176, 699 N.W.2d 71 (2005).

5 State v. Yates, 161 Wash. 2d 714, 168 P.3d 359 (2007).

6 Zarrella v. Minnesota Mut. Life Ins. Co., 824 A.2d 1249 (R.I. 2003).

7 Strickland v. Strickland, 375 S.C. 76, 650 S.E.2d 465 (2007).

8 D & S Realty, Inc. v. Markel Ins. Co., 280 Neb. 567, 789 N.W.2d 1 (2010).

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28 Am. Jur. 2d Estoppel and Waiver § 27

American Jurisprudence, Second Edition | May 2021 Update

Estoppel and Waiver
Romualdo P. Eclavea, J.D.; Eric C. Surette, J.D.

Part One. Estoppel

III. Equitable Estoppel or Estoppel in Pais

A. In General

1. Definitions, Purpose and Operation

§ 27. Definitions and nature

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Estoppel 52(1) to 52(5)

Forms

Am. Jur. Pleading and Practice Forms, Estoppel and Waiver § 24 (Instructions to jury—Nature and effect of estoppel)

Equitable estoppel is a judicial remedy by which a party may be precluded by its own act or omission from asserting a right to which it otherwise would have been entitled or from pleading or proving an otherwise important fact.[1] It is the principle by which a party is precluded from denying any material fact, induced by his or her words or conduct upon which a person relied, whereby the person changed his or her position in such a way that injury would be suffered if such denial or contrary assertion was allowed.[2] The doctrine of "equitable estoppel," otherwise known as "estoppel in pais," applies when any one, by his or her acts, representations, or admissions, or by his or her silence when he or she ought to speak out, intentionally or through culpable negligence induces another to believe that certain facts exist, and such other rightfully relies and acts on such belief so that he or she will be prejudiced if the former is permitted to deny the existence of such facts.[3] Equitable estoppel serves to forbid one to speak against his or her own act, representations, or commitments communicated to another who reasonably relies upon them to his or her injury.[4] It arises whenever a party, by his or her acts or conduct, reasonably induces another to believe that certain facts exist and that person reasonably relies on and acts on those beliefs to his or her detriment.[5] Equitable estoppel arises only when a party, by acts, conduct, or acquiescence, causes another to change his or her position[6] or where one party induces another

to detrimentally change his or her position in reasonable reliance on that party's actions through words, conduct, or silence.[7] The doctrine of equitable estoppel applies where, as a result of the conduct of a party upon which another person has in good faith relied to his or her detriment, the acting party is absolutely precluded, both at law and in equity, from asserting rights that might have otherwise existed.[8] Equitable estoppel is used to prevent injustice and should not be used to work a positive gain to a party.[9] Under the doctrine of equitable estoppel, a person may be precluded by his or her act or conduct, or silence when it was his or her duty to speak, from asserting a right that such person otherwise would have had;[10] it is a doctrine by which a party may be precluded from enforcing an otherwise legally enforceable right because of previous actions of that party[11] or by which a party is prevented by his or her own acts from claiming a right to the detriment of the other party who was entitled to rely on such conduct and acted accordingly.[12] It constitutes a bar that precludes a party from denying or asserting anything to the contrary of those matters established as the truth by his or her own deeds, acts, or representations.[13] A person who by his or her speech or conduct has induced another to act in a particular manner ought not to be permitted to adopt an inconsistent position, attitude, or course of conduct to the loss or injury of such other.[14]

In its broadest sense, equitable estoppel is a means of preventing a party from asserting a legal claim or defense that is contrary or inconsistent with his or her prior action or conduct.[15] Under the doctrine of equitable estoppel, certain conduct by a party is viewed as being so offensive that it precludes the party from later asserting a claim or defense that would otherwise be meritorious; in other words, it serves to offset the benefit that the offending party would otherwise derive from the conduct.[16] Equitable estoppel prevents a party from asserting rights when his or her own conduct renders that assertion contrary to equity and good conscience.[17]

The term "equitable estoppel" has been variously defined, frequently by pointing out one or more of the elements of, or prerequisites to,[18] the application of the doctrine or the situations in which the doctrine is urged.[19] The most comprehensive definition of equitable estoppel or estoppel in pais is that it is the principle by which a party who knows or should know the truth is absolutely precluded, both at law and in equity, from denying, or asserting the contrary of, any material fact that, by his or her words or conduct, affirmative or negative, intentionally or through culpable negligence, he or she has induced another, who was excusably ignorant of the true facts and who had a right to rely upon such words or conduct, to believe and act upon them thereby, as a consequence reasonably to be anticipated, changing his or her position in such a way that he or she would suffer injury if such denial or contrary assertion was allowed.[20] However, in the final analysis, an equitable estoppel rests upon the facts and circumstances of the particular case in which it is urged,[21] considered in the framework of the elements, requisites, and grounds of equitable estoppel,[22] and consequently, any attempted definition usually amounts to no more than a declaration of an estoppel under those facts and circumstances.[23]

CUMULATIVE SUPPLEMENT

Cases:

In Indiana, doctrine of equitable estoppel is a concept by which one's own acts or conduct prevents the claiming of a right to the detriment of another party who was entitled to and did rely on the conduct; in order to assert equitable estoppel against an insurer, the conduct of the insurer must be of a sufficient affirmative character to prevent inquiry or to elude investigation or to mislead and hinder. State Farm Mut. Auto. Ins. Co. v. Sellers, 854 F. Supp. 2d 609 (N.D. Ind. 2012).

Under Indiana law, equitable estoppel is a bulwark for fundamental fairness against intentional deception; it applies if one party, through its representations or course of conduct, knowingly misleads or induces another party to believe and act upon his or her conduct in good faith and without knowledge of the facts. Mills v. Hausmann-McNally, S.C., 55 F. Supp. 3d 1128 (S.D. Ind. 2014).

The essence of an estoppel is that one has, by false statements or conduct, led another to do that which he would not otherwise have done and as a result the other has suffered injury. Brown v. Chiang, 198 Cal. App. 4th 1203, 2011 WL 3806694 (3d Dist. 2011).

"Equitable estoppel" precludes a party from asserting certain facts where the party, by his conduct, has induced another to change his position in good faith reliance upon that conduct; however, the doctrine of equitable estoppel does not apply against a state or its agencies in the exercise of a governmental function. Union Twp.-Clermont Cty., C.I.C., Inc. v. Lamping, 2015-Ohio-1092, 31 N.E.3d 116 (Ohio Ct. App. 12th Dist. Clermont County 2015).

In contrast to promissory estoppel, which is forward-looking, equitable estoppel prevents a party from taking a position inconsistent with a previous one where inequitable consequences would result to a party who has justifiably and in good faith relied. Washington Educ. Ass'n v. Washington Dept. of Retirement Systems, 332 P.3d 428 (Wash. 2014).

[END OF SUPPLEMENT]

Footnotes

1 Baldwin v. Wolff, 294 Ill. App. 3d 373, 228 Ill. Dec. 873, 690 N.E.2d 632 (1st Dist. 1998); Matter of Edwards, 694 N.E.2d 701 (Ind. 1998); Longley v. Knapp, 1998 ME 142, 713 A.2d 939 (Me. 1998); Hoar v. Aetna Cas. and Sur. Co., 1998 OK 95, 968 P.2d 1219 (Okla. 1998); Eason v. Eason, 384 S.C. 473, 682 S.E.2d 804 (2009).

2 Compere's Nursing Home, Inc. v. Estate of Farish ex rel. Lewis, 982 So. 2d 382 (Miss. 2008).

3 Whitacre Partnership v. Biosignia, Inc., 358 N.C. 1, 591 S.E.2d 870 (2004).

4 In re Carr, 156 N.H. 498, 938 A.2d 89 (2007).

5 Baldwin v. Wolff, 294 Ill. App. 3d 373, 228 Ill. Dec. 873, 690 N.E.2d 632 (1st Dist. 1998); Feinzig v. Ficksman, 42 Mass. App. Ct. 113, 674 N.E.2d 1329 (1997); Youderian Const., Inc. v. Hall, 285 Mont. 1, 945 P.2d 909 (1997); Monmouth County Div. of Social Services on Behalf of Div. of Youth and Family Services v. C.R., 316 N.J. Super. 600, 720 A.2d 1004 (Ch. Div. 1998); Jean Maby H. v. Joseph H., 246 A.D.2d 282, 676 N.Y.S.2d 677 (2d Dep't 1998); Gore v. Myrtle/Mueller, 362 N.C. 27, 653 S.E.2d 400 (2007); Chubb v. Ohio Bur. of Workers' Comp., 81 Ohio St. 3d 275, 1998-Ohio-628, 690 N.E.2d 1267 (1998).

6 Mullinnix LLC v. HKB Royalty Trust, 2006 WY 14, 126 P.3d 909 (Wyo. 2006).

7 V Bar Ranch LLC v. Cotten, 233 P.3d 1200 (Colo. 2010); State ex rel. Shisler v. Ohio Pub. Emps. Retirement Sys., 122 Ohio St. 3d 148, 2009-Ohio-2522, 909 N.E.2d 610 (2009).

8 United Cities Gas Co. v. Brock Exploration Co., 995 F. Supp. 1284 (D. Kan. 1998); Toshiba Master Lease, Ltd. v. Ottawa University, 23 Kan. App. 2d 129, 927 P.2d 967 (1996); Attorney Grievance Com'n of Maryland v. Ruddy, 411 Md. 30, 981 A.2d 637 (2009), cert. denied, 131 S. Ct. 125, 178 L. Ed. 2d 33 (2010); Burns v. Nielsen, 273 Neb. 724, 732 N.W.2d 640 (2007).

9 Sullivan v. Buckhorn Ranch Partnership, 2005 OK 41, 119 P.3d 192 (Okla. 2005).

10 Day v. Advanced M & D Sales, Inc., 336 Or. 511, 86 P.3d 678 (2004).

11 Sturbridge Home Builders, Inc. v. Downing Seaport, Inc., 890 A.2d 58 (R.I. 2005).

12 Anderson v. Cox, 977 F. Supp. 413 (W.D. Va. 1997); Matter of Edwards, 694 N.E.2d 701 (Ind. 1998); Brown v. Taylor, 120 N.M. 302, 901 P.2d 720 (1995); Blais v. Allied Exterminating Co., 198 W. Va. 674, 482 S.E.2d 659 (1996).

13 Berrington Corp. v. State Dept. of Revenue, 277 Neb. 765, 765 N.W.2d 448 (2009).

14 Guinness Import Co. v. Mark VII Distributors, Inc., 153 F.3d 607 (8th Cir. 1998) (applying Minnesota law); Bruestle v. S & M Motors, Inc., 914 S.W.2d 353, 59 A.L.R.5th 881 (Ky. Ct. App. 1996); Com. v. Celano, 717 A.2d 1071 (Pa. Commw. Ct. 1998); In In Interest of Moragas, 972 S.W.2d 86 (Tex. App. Texarkana 1998); Potesta v. U.S. Fidelity & Guar. Co., 202 W. Va. 308, 504 S.E.2d 135 (1998).

15 Holland Group, Inc. v. North Carolina Dept. of Admin., State Const. Office, 130 N.C. App. 721, 504 S.E.2d 300 (1998); Duncan Land & Exploration, Inc. v. Littlepage, 984 S.W.2d 318 (Tex. App. Fort Worth 1998).

16 Akers v. Pike County Bd. of Educ., 171 S.W.3d 740 (Ky. 2005).

17 General American Life Ins. Co. v. AmSouth Bank, 100 F.3d 893, 31 U.C.C. Rep. Serv. 2d 482 (11th Cir. 1996) (applying Alabama law); Vanice v. Oehm, 255 Neb. 166, 582 N.W.2d 615 (1998); NGA #2 Ltd. Liability Co. v. Rains, 113 Nev. 1151, 946 P.2d 163 (1997).

18 Generally, as to such elements or prerequisites, see §§ 39 to 41.

19 Lincoln Elec. Co. v. St. Paul Fire and Marine Ins. Co., 10 F. Supp. 2d 856 (N.D. Ohio 1998), aff'd in part, rev'd in part on other grounds, 210 F.3d 672, 41 U.C.C. Rep. Serv. 2d 753, 2000 FED App. 0152P (6th Cir. 2000); Mellon v. Century Cable Management Corp., 247 Conn. 790, 725 A.2d 943 (1999); Zeringue v. Wireways, Inc., 714 So. 2d 13 (La. Ct. App. 1st Cir. 1998), writ denied, 721 So. 2d 475 (La. 1998); Holzman v. Fiola Blum, Inc., 125 Md. App. 602, 726 A.2d 818 (1999); Oxley v. General Atlantic Resources, Inc., 1997 OK 46, 936 P.2d 943 (Okla. 1997); Davidheiser v. Pierce County, 92 Wash. App. 146, 960 P.2d 998 (Div. 2 1998).

20 Jamison, Money, Farmer & Co., P.C. v. Standeffer, 678 So. 2d 1061 (Ala. 1996); Wabash Grain, Inc. v. Smith, 700 N.E.2d 234 (Ind. Ct. App. 1998); Investors Title Co. v. Chicago Title Ins. Co., 983 S.W.2d 533 (Mo. Ct. App. E.D. 1998); Edgewater Steel Co. v. W.C.A.B. (Beers), 719 A.2d 812 (Pa. Commw. Ct. 1998); B-F Drilling, Inc. v. State ex rel. Wyoming Workers' Safety and Compensation Div., 942 P.2d 392 (Wyo. 1997).

21 § 26.

22 As to such elements, etc., see §§ 39 to 41.

23 Jennings v. Bituminous Cas. Corp., 47 Ill. App. 2d 243, 197 N.E.2d 513 (5th Dist. 1964); Monadnock Regional School Dist. v. Towns of Fitzwilliam et al., 105 N.H. 487, 203 A.2d 46 (1964).

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28 Am. Jur. 2d Estoppel and Waiver § 28

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Estoppel and Waiver
Romualdo P. Eclavea, J.D.; Eric C. Surette, J.D.

Part One. Estoppel

III. Equitable Estoppel or Estoppel in Pais

A. In General

1. Definitions, Purpose and Operation

§ 28. Basis, function, and purpose

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Estoppel 52(1) to 52(5)

The doctrine of equitable estoppel is based on principles of justice[1]

Equitable estoppel will grant relief to prevent a party from suffering a gross injustice at the hands of the other party who brought about the situation or condition.[2] and good conscience[3] and on principles of fairness.[4] It is similarly based on an application of the golden rule to the everyday affairs of persons, requiring that one should do unto others as, in equity and good conscience, he or she would have them do unto him or her if their positions were reversed.[5]

Equitable estoppel is a doctrine addressed to the discretion of the court and is intended to prevent a party from taking unconscionable advantage of his or her own wrong by asserting his or her strict legal rights.[6] Where undisputed facts in the record lead to the conclusion that the elements of equitable estoppel are present, and no alternate view of the facts supports a contrary conclusion, the decision to apply the doctrine of equitable estoppel is within the court's discretion.[7]

The purpose of equitable estoppel is to preclude a person from asserting a right when he or she has led another to form the reasonable belief that the right would not be asserted, and loss or prejudice to the other would result if the right were asserted.[8] It also has the purpose to forbid one to speak against his or her own act, representations, or commitments to the injury of one to whom they were directed and who reasonably relied thereon;[9] to prevent someone from enforcing rights that would work injustice on the person against whom enforcement is sought and who, while justifiably relying on the opposing party's actions, has been misled into a detrimental change of position;[10] or to prevent a party from taking inequitable advantage of a situation he

or she caused.[11] Equitable estoppel functions to prevent the assertion of legal rights that in equity and good conscience should not be available due to a party's conduct.[12] It is designed to aid the law in the administration of justice where without its aid injustice might result.[13] Conduct that works a fraud or constructive fraud on the tribunal and has a detrimental effect on the accuracy and integrity of a judgment warrants the remedy of equitable estoppel.[14]

The doctrine always presupposes error on one side and fault or fraud upon the other and some defect of which it would be inequitable for the party against whom the doctrine is asserted to take advantage.[15] It concludes the truth in order to prevent fraud and falsehood and imposes silence on a party only when in conscience and honesty he or she should not be allowed to speak.[16] Thus, the proper function of equitable estoppel is the prevention of actual or constructive fraud.[17]

Equitable estoppel, rather than being an actual cause of action, is more precisely characterized as an equitable doctrine that suggests a tort-related theory in that it attempts to allocate loss resulting from the misrepresentation of facts to the most culpable party and to ameliorate an innocent party's losses.[18]

CUMULATIVE SUPPLEMENT

Cases:

Where one party has by his representation or his conduct induced the other party to a transaction to give him an advantage which it would be against equity and good conscience for him to assert, he would not in a court of justice be permitted to avail himself of the advantage; the "equitable estoppel doctrine" is well understood and is applied by courts of law as well as equity where the technical advantage thus obtained is set up and relied on to defeat the ends of justice or establish a dishonest claim. State ex rel. Beisly v. Perigo, 469 S.W.3d 434 (Mo. 2015).

The purpose of equitable estoppel is to preserve rights already acquired and not to create new ones. Erickson v. Brown, 2012 ND 43, 2012 WL 603647 (N.D. 2012).

[END OF SUPPLEMENT]

Footnotes

1 Moore v. First Sec. Cas. Co., 224 Mich. App. 370, 568 N.W.2d 841 (1997); In re Estate of Richardson, 903 So. 2d 51 (Miss. 2005); Monmouth County Div. of Social Services on Behalf of Div. of Youth and Family Services v. C.R., 316 N.J. Super. 600, 720 A.2d 1004 (Ch. Div. 1998).

2 Avanta Federal Credit Union v. Shupak, 2009 MT 458, 354 Mont. 372, 223 P.3d 863, 70 U.C.C. Rep. Serv. 2d 653 (2009).

3 Monmouth County Div. of Social Services on Behalf of Div. of Youth and Family Services v. C.R., 316 N.J. Super. 600, 720 A.2d 1004 (Ch. Div. 1998).

4 Anderson v. Cox, 977 F. Supp. 413 (W.D. Va. 1997); Steinhart v. County of Los Angeles, 47 Cal. 4th 1298, 104 Cal. Rptr. 3d 195, 223 P.3d 57 (2010); Weinig v. Weinig, 674 N.E.2d 991 (Ind. Ct. App. 1996); Lodge at Bolton Valley Condominium Ass'n v. Hamilton, 180 Vt. 497, 2006 VT 41, 905 A.2d 611 (2006).

5 Friedland v. Gales, 131 N.C. App. 802, 509 S.E.2d 793 (1998).

6 Brekke v. THM Biomedical, Inc., 683 N.W.2d 771 (Minn. 2004).

7 Affordable Erecting, Inc. v. Neosho Trompler, Inc., 2006 WI 67, 291 Wis. 2d 259, 715 N.W.2d 620 (2006).

8 Shondel J. v. Mark D., 7 N.Y.3d 320, 820 N.Y.S.2d 199, 853 N.E.2d 610 (2006).

9 In re Ionosphere Clubs, Inc., 85 F.3d 992 (2d Cir. 1996); Hilco Property Services, Inc. v. U.S., 929 F. Supp. 526 (D.N.H. 1996); Hubble v. O'Connor, 291 Ill. App. 3d 974, 225 Ill. Dec. 825, 684 N.E.2d 816 (1st Dist. 1997); Billings Post No. 1634 v. Montana Dept. of Revenue, 284 Mont. 84, 943 P.2d 517 (1997).

10 Shondel J. v. Mark D., 7 N.Y.3d 320, 820 N.Y.S.2d 199, 853 N.E.2d 610 (2006).

11 Weiss v. Rojanasathit, 975 S.W.2d 113 (Mo. 1998).

12 In re Harrison Living Trust, 121 Nev. 217, 112 P.3d 1058 (2005).

13 In re Ionosphere Clubs, Inc., 85 F.3d 992 (2d Cir. 1996); Hilco Property Services, Inc. v. U.S., 929 F. Supp. 526 (D.N.H. 1996); Holland Group, Inc. v. North Carolina Dept. of Admin., State Const. Office, 130 N.C. App. 721, 504 S.E.2d 300 (1998).

14 Zurich American Ins. Co. v. Journey Operating, LLC, 323 S.W.3d 696 (Ky. 2010).

15 Weinig v. Weinig, 674 N.E.2d 991 (Ind. Ct. App. 1996); Seal v. Giant Food, Inc., 116 Md. App. 87, 695 A.2d 597 (1997); Kelly v. Wallace, 1998 MT 307, 292 Mont. 129, 972 P.2d 1117 (1998); In re Loomis, 1998 SD 113, 587 N.W.2d 427 (S.D. 1998).

16 Hilco Property Services, Inc. v. U.S., 929 F. Supp. 526 (D.N.H. 1996).

17 Hilco Property Services, Inc. v. U.S., 929 F. Supp. 526 (D.N.H. 1996); Baldwin v. Wolff, 294 Ill. App. 3d 373, 228 Ill. Dec. 873, 690 N.E.2d 632 (1st Dist. 1998); Farrington v. Allsop, 670 N.E.2d 106 (Ind. Ct. App. 1996); Jean Maby H. v. Joseph H., 246 A.D.2d 282, 676 N.Y.S.2d 677 (2d Dep't 1998); Doe v. Archdiocese of Cincinnati, 116 Ohio St. 3d 538, 2008-Ohio-67, 880 N.E.2d 892 (2008); Jefferson Place Condominium Assn. v. Naples, 125 Ohio App. 3d 394, 708 N.E.2d 771 (7th Dist. Mahoning County 1998).

18 Robinson v. Colorado State Lottery Div., 179 P.3d 998 (Colo. 2008).

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28 Am. Jur. 2d Estoppel and Waiver § 29

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Estoppel and Waiver
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Part One. Estoppel

III. Equitable Estoppel or Estoppel in Pais

A. In General

1. Definitions, Purpose and Operation

§ 29. Limitations of doctrine

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Estoppel 52(1) to 52(8)

Equitable estoppel cannot arise against a party except when justice to the rights of others demands it[1] and when it would be inequitable to refuse.[2] Equitable estoppel is intended to prevent a party from taking unconscionable advantage of its own wrong by asserting its strict legal rights;[3] it is an extraordinary remedy and should only be invoked to prevent unconscionable results.[4] The doctrine of equitable estoppel should be applied cautiously and only when equity clearly requires it.[5] Indeed, equitable estoppel can only be applied to remedy an inequity,[6] and it is to be applied with the utmost caution and restraint[7] and should be carefully and sparingly applied.[8] Equitable estoppel is not favored[9] and will be sustained only upon clear and convincing evidence.[10] It should be used only in exceptional circumstances[11] where the interests of justice, morality, and common fairness dictate that course.[12] In determining the application of the doctrine, the counter-equities of the parties are entitled to due consideration,[13] and thus, a court must consider the conduct of both parties to determine whether each has conformed to strict standards of equity with regard to the matter at issue.[14] Equitable estoppel is available only in defense of a legal or equitable right or claim made in good faith and can never be asserted to uphold crime, fraud, injustice, or wrong of any character.[15]

Observation:

Although the courts may apply the doctrine of equitable estoppel against the State,[16] as general rule, equitable estoppel will be applied against the State only in rare instances and under exceptional circumstances.[17] Similarly, equitable estoppel can be applied against a state agency but only in exceptional circumstances;[18] circumstances that are so exceptional as to allow equitable estoppel against a government agency must include some gross inequity between the parties.[19]

Footnotes

1 State ex inf. Shartel, ex rel. City of Sikeston v. Missouri Utilities Co., 331 Mo. 337, 53 S.W.2d 394, 89 A.L.R. 607 (1932); Ott v. Ott, 182 S.C. 135, 188 S.E. 789 (1936).

2 Oxley v. General Atlantic Resources, Inc., 1997 OK 46, 936 P.2d 943 (Okla. 1997); Davidheiser v. Pierce County, 92 Wash. App. 146, 960 P.2d 998 (Div. 2 1998).

3 Plymouth Foam Products, Inc. v. City of Becker, Minn., 120 F.3d 153 (8th Cir. 1997) (applying Minnesota law); Bruestle v. S & M Motors, Inc., 914 S.W.2d 353, 59 A.L.R.5th 881 (Ky. Ct. App. 1996); Billings Post No. 1634 v. Montana Dept. of Revenue, 284 Mont. 84, 943 P.2d 517 (1997).

4 B.C. Rogers Poultry, Inc. v. Wedgeworth, 911 So. 2d 483, 22 A.L.R.6th 815 (Miss. 2005).

5 Simmons Housing, Inc. v. Shelton ex rel. Shelton, 36 So. 3d 1283 (Miss. 2010).

6 Waffer Internat. Corp. v. Khorsandi, 69 Cal. App. 4th 1261, 82 Cal. Rptr. 2d 241 (2d Dist. 1999).

7 Drozd v. I.N.S., 155 F.3d 81 (2d Cir. 1998); F.B. Transit Road Corp. v. DRT Const. Co., Inc., 241 A.D.2d 930, 661 N.Y.S.2d 367 (4th Dep't 1997).

8 Longley v. Knapp, 1998 ME 142, 713 A.2d 939 (Me. 1998).

9 Investors Title Co. v. Chicago Title Ins. Co., 983 S.W.2d 533 (Mo. Ct. App. E.D. 1998); Oster v. Valley County, 2006 MT 180, 333 Mont. 76, 140 P.3d 1079 (2006); Sexton v. Sevier County, 948 S.W.2d 747 (Tenn. Ct. App. 1997); Lybbert v. Grant County, 93 Wash. App. 627, 969 P.2d 1112 (Div. 3 1999), aff'd, 141 Wash. 2d 29, 1 P.3d 1124 (2000).

10 Oster v. Valley County, 2006 MT 180, 333 Mont. 76, 140 P.3d 1079 (2006).

11 Redman v. U.S. West Business Resources, Inc., 153 F.3d 691 (8th Cir. 1998); Powell v. Campbell, 912 So. 2d 978 (Miss. 2005).

12 Phillips v. Borough of Keyport, 107 F.3d 164 (3d Cir. 1997) (applying New Jersey law).

13 Tarlton v. Stidham, 122 N.C. App. 77, 469 S.E.2d 38 (1996).

14 Whitacre Partnership v. Biosignia, Inc., 358 N.C. 1, 591 S.E.2d 870 (2004).

15 C.R. v. J.G., 306 N.J. Super. 214, 703 A.2d 385 (Ch. Div. 1997).

16 Button v. Haines Borough, 208 P.3d 194 (Alaska 2009).

17 State v. Harris, 881 So. 2d 1079 (Fla. 2004).

18 Board of Trustees, Kentucky Retirement Systems v. Grant, 257 S.W.3d 591 (Ky. Ct. App. 2008).

19 Board of Trustees, Kentucky Retirement Systems v. Grant, 257 S.W.3d 591 (Ky. Ct. App. 2008).

28 Am. Jur. 2d Estoppel and Waiver § 30

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Estoppel and Waiver
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Part One. Estoppel

III. Equitable Estoppel or Estoppel in Pais

A. In General

1. Definitions, Purpose and Operation

§ 30. Operation and effect

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Estoppel 52(1), 52(7), 52(8)

From a practical standpoint, the effect of an equitable estoppel or estoppel in pais is to prevent the assertion of what would otherwise be an unequivocal right or to preclude what would otherwise be a good defense.[1] Such an estoppel operates always as a shield, never as a sword.[2] Its office is not to work a positive gain to a party,[3] and it does not of itself create a new right,[4] impose an obligation,[5] or give a cause of action;[6] rather, it serves to prevent losses otherwise inescapable,[7] to prevent an otherwise unjust result,[8] and to preserve rights already acquired.[9]

While equitable estoppel has been referred to as an affirmative defense,[10] it is more appropriate to call it a defensive doctrine that prevents an inequitable result.[11] It is neither a claim nor a defense but is a means of precluding the assertion of a claim or a defense against a party who has detrimentally relied on the conduct of the party asserting the claim or defense.[12] The view has also been expressed that equitable estoppel is an affirmative defense or an affirmative avoidance in response to an affirmative defense.[13]

The doctrine of equitable estoppel may be applied to prevent a fraudulent or inequitable resort to a statute of limitations, and a defendant may, by his or her representations, promises, or conduct, be so estopped where the other elements of estoppel are present.[14]

Footnotes

1 General American Life Ins. Co. v. AmSouth Bank, 100 F.3d 893, 31 U.C.C. Rep. Serv. 2d 482 (11th Cir. 1996) (applying Alabama law); Zabel v. U.S., 995 F. Supp. 1036 (D. Neb. 1998); Hilco Property Services, Inc. v. U.S., 929 F. Supp. 526 (D.N.H. 1996); West American Ins. Co. v. Meridian Mutual Ins. Co., 230 Mich. App. 305, 583 N.W.2d 548 (1998); Maher v. Tietex Corp., 331 S.C. 371, 500 S.E.2d 204 (Ct. App. 1998).

2 West American Ins. Co. v. Meridian Mutual Ins. Co., 230 Mich. App. 305, 583 N.W.2d 548 (1998); Guzzardo v. City Group, Inc., 910 S.W.2d 314 (Mo. Ct. App. E.D. 1995).

3 Guzzardo v. City Group, Inc., 910 S.W.2d 314 (Mo. Ct. App. E.D. 1995); First State Bank v. Diamond Plastics Corp., 1995 OK 21, 891 P.2d 1262, 26 U.C.C. Rep. Serv. 2d 443, 53 A.L.R.5th 905 (Okla. 1995).

4 General American Life Ins. Co. v. AmSouth Bank, 100 F.3d 893, 31 U.C.C. Rep. Serv. 2d 482 (11th Cir. 1996) (applying Alabama law); Scheurer v. New York City Employees' Retirement System, 223 A.D.2d 379, 636 N.Y.S.2d 291 (1st Dep't 1996); Sexton v. Sevier County, 948 S.W.2d 747 (Tenn. Ct. App. 1997).

5 General American Life Ins. Co. v. AmSouth Bank, 100 F.3d 893, 31 U.C.C. Rep. Serv. 2d 482 (11th Cir. 1996).

6 Robinson v. Colorado State Lottery Div., 179 P.3d 998 (Colo. 2008); State, Dept. of Transp. v. FirstMerit Bank, 711 So. 2d 1217 (Fla. Dist. Ct. App. 2d Dist. 1998); West American Ins. Co. v. Meridian Mutual Ins. Co., 230 Mich. App. 305, 583 N.W.2d 548 (1998); Hoag v. McBride & Son Inv. Co., Inc., 967 S.W.2d 157 (Mo. Ct. App. E.D. 1998); Bennett v. Farmers Ins. Co. of Oregon, 150 Or. App. 63, 945 P.2d 595 (1997), aff'd in part, rev'd in part on other grounds, 332 Or. 138, 26 P.3d 785 (2001); Joe v. Two 30 Nine Joint Venture, 145 S.W.3d 150 (Tex. 2004).

7 Guzzardo v. City Group, Inc., 910 S.W.2d 314 (Mo. Ct. App. E.D. 1995).

8 General American Life Ins. Co. v. AmSouth Bank, 100 F.3d 893, 31 U.C.C. Rep. Serv. 2d 482 (11th Cir. 1996).

9 Sexton v. Sevier County, 948 S.W.2d 747 (Tenn. Ct. App. 1997).

10 Readco, Inc. v. Marine Midland Bank, 81 F.3d 295 (2d Cir. 1996) (applying New York law); State, Dept. of Transp. v. FirstMerit Bank, 711 So. 2d 1217 (Fla. Dist. Ct. App. 2d Dist. 1998); Hoag v. McBride & Son Inv. Co., Inc., 967 S.W.2d 157 (Mo. Ct. App. E.D. 1998).

Equitable estoppel is as a common-law affirmative defense preventing one party who has made certain representations from taking unfair advantage of another when the party making the representations changes its position to the prejudice of the party who relied upon the representations. Markey v. Carney, 705 N.W.2d 13 (Iowa 2005).

Equitable estoppel may be asserted as a defensive plea to bar a defendant from raising a particular defense. Joe v. Two 30 Nine Joint Venture, 145 S.W.3d 150 (Tex. 2004).

11 Wheat Ridge Urban Renewal Authority v. Cornerstone Group XXII, L.L.C., 176 P.3d 737 (Colo. 2007); Bennett v. Farmers Ins. Co. of Oregon, 150 Or. App. 63, 945 P.2d 595 (1997), aff'd in part, rev'd in part on other grounds, 332 Or. 138, 26 P.3d 785 (2001); Joe v. Two 30 Nine Joint Venture, 145 S.W.3d 150 (Tex. 2004).

12 Upsher-Smith Laboratories, Inc. v. Mylan Laboratories, Inc., 944 F. Supp. 1411, 31 U.C.C. Rep. Serv. 2d 698 (D. Minn. 1996); Zabel v. U.S., 995 F. Supp. 1036 (D. Neb. 1998).

13 Hoag v. McBride & Son Inv. Co., Inc., 967 S.W.2d 157 (Mo. Ct. App. E.D. 1998).

14 Olsen v. Olsen, 265 Neb. 299, 657 N.W.2d 1 (2003).

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28 Am. Jur. 2d Estoppel and Waiver § 31

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Estoppel and Waiver
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Part One. Estoppel

III. Equitable Estoppel or Estoppel in Pais

A. In General

1. Definitions, Purpose and Operation

§ 31. Operation and effect—Extent of operation or application

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Estoppel 52(1), 52(7), 52(8)

The operation of the doctrine of estoppel is limited in several respects involving the person or persons affected,[1] thus, a stranger to a transaction is not bound by an estoppel that arises therein.[2] Estoppel cannot, any more than a private contract, be the means of successfully avoiding the requirements of legislation enacted for the protection of a public interest.[3] Estoppel does not operate to defeat positive law or public policy;[4] it cannot be applied in the presence of an unambiguous contract and pertinent statutory law.[5] Estoppel will not apply to the detriment of the public interest;[6] therefore, substantive rules based on public policy sometimes control the allowance or disallowance of estoppel.[7] The courts must weigh the public interest frustrated by the estoppel against the equities of the case.[8] Moreover, one cannot ordinarily be estopped from asserting the direct violation of a decisive prohibition of statute or the unenforceability of a contract contrary to law.[9]

Practice Tip:

Because estoppel applies only to voidable acts,[10] the subject-matter jurisdiction of a court cannot be conferred by estoppel.[11]

Equitable estoppel may, in proper cases, operate to cut off a right or privilege conferred by statute or even by the constitution.[12] Thus, the doctrine of equitable estoppel may, in a proper case, be invoked to prevent a defendant from relying on the statute of limitations.[13] However, since estoppel in pais operates as a shield and not as a sword,[14] the estoppel should not be given effect beyond the extent of the injury,[15] or beyond what is necessary to accomplish justice between the parties,[16] but should be limited to saving or making whole the person in whose favor it arises.[17]

Observation:

Equitable considerations and estoppel cannot be permitted to prevail when in conflict with positive written law.[18]

CUMULATIVE SUPPLEMENT

Cases:

Estoppel cannot operate to relieve one from the mandatory operation of a statute. MacArthur Properties I, LLC v. Galbraith, 182 A.D.3d 514, 123 N.Y.S.3d 567 (1st Dep't 2020).

[END OF SUPPLEMENT]

Footnotes

1 §§ 118 to 121.

2 § 120.

3 U.S. v. Undetermined Quantities of Clear Plastic Bags of an Article of Drug for Veterinary Use, 963 F. Supp. 641 (S.D. Ohio 1997), judgment aff'd, 145 F.3d 1335 (6th Cir. 1998); Scheurer v. New York City Employees' Retirement System, 223 A.D.2d 379, 636 N.Y.S.2d 291 (1st Dep't 1996).

4 United Cities Gas Co. v. Brock Exploration Co., 995 F. Supp. 1284 (D. Kan. 1998); Zeringue v. Wireways, Inc., 714 So. 2d 13 (La. Ct. App. 1st Cir. 1998), writ denied, 721 So. 2d 475 (La. 1998); Scheurer v. New York City Employees' Retirement System, 223 A.D.2d 379, 636 N.Y.S.2d 291 (1st Dep't 1996).
A landowner was not estopped from raising a statutory bar to the city's unilateral annexation of an improvement district as a defense to the argument that its predecessors consented to annexation; estoppel would defeat the public policy contained in the statute. Dillon Real Estate Co. Inc. v. City of Topeka, 284 Kan. 662, 163 P.3d 298 (2007).

5 Commercial Nat. Bank v. Rowe, 666 So. 2d 1312 (La. Ct. App. 2d Cir. 1996).

6 Valencia Energy Co. v. Arizona Dept. of Revenue, 191 Ariz. 565, 959 P.2d 1256 (1998).

7 Jovine v. FHP, Inc., 64 Cal. App. 4th 1506, 76 Cal. Rptr. 2d 322 (2d Dist. 1998).

8 Shetka v. Aitkin County, 541 N.W.2d 349 (Minn. Ct. App. 1995).

9 Appon v. Belle Isle Corp., 29 Del. Ch. 122, 46 A.2d 749 (1946), judgment aff'd, 29 Del. Ch. 554, 49 A.2d 1 (1946); State v. Northwest Magnesite Co., 28 Wash. 2d 1, 182 P.2d 643 (1947).

10 People v. Burnett, 71 Cal. App. 4th 151, 83 Cal. Rptr. 2d 629 (1st Dist. 1999).

11 People v. Lara, 48 Cal. 4th 216, 106 Cal. Rptr. 3d 208, 226 P.3d 322 (2010); Thompson v. Lynch, 990 A.2d 432 (Del. 2010); City of Eagle v. Idaho Dept. of Water Resources, 150 Idaho 449, 247 P.3d 1037 (2011); State v. Davis, 581 N.W.2d 614 (Iowa 1998); Padron v. Lopez, 289 Kan. 1089, 220 P.3d 345 (2009); Nordike v. Nordike, 231 S.W.3d 733 (Ky. 2007); Steele v. Steele, 978 S.W.2d 835 (Mo. Ct. App. W.D. 1998); Cummins Management, L.P. v. Gilroy, 266 Neb. 635, 667 N.W.2d 538 (2003); In re T.R.P., 360 N.C. 588, 636 S.E.2d 787 (2006); In re Powers, 974 S.W.2d 867 (Tex. App. Houston 14th Dist. 1998).
The right to object for a want of subject-matter jurisdiction cannot be lost by estoppel. Afzall ex rel. Afzall v. Com., 273 Va. 226, 639 S.E.2d 279 (2007).

12 Johnson v. Neel, 123 Colo. 377, 229 P.2d 939 (1951); In re Asterbloom's Adoption, 63 Nev. 190, 165 P.2d 157 (1946).

13 Troy's Stereo Center, Inc. v. Hodson, 39 N.C. App. 591, 251 S.E.2d 673 (1979).

14 § 30.

15 Camerer v. California Savings & Commercial Bank of San Diego, 4 Cal. 2d 159, 48 P.2d 39, 100 A.L.R. 667 (1935).

16 Mortvedt v. State, Dept. of Natural Resources, 941 P.2d 126 (Alaska 1997).

17 Camerer v. California Savings & Commercial Bank of San Diego, 4 Cal. 2d 159, 48 P.2d 39, 100 A.L.R. 667 (1935).

18 Fishbein v. State ex rel. Louisiana State University Health Sciences Center, 898 So. 2d 1260, 197 Ed. Law Rep. 969 (La. 2005).

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28 Am. Jur. 2d Estoppel and Waiver § 32

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Part One. Estoppel

III. Equitable Estoppel or Estoppel in Pais

A. In General

2. Comparisons and Distinctions

§ 32. Generally

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Estoppel 52(1) to 52.10(1)

Although originally some distinctions have been made between estoppel in pais and equitable estoppel, they are now generally used interchangeably as applicable to all estoppels other than those by record, deed, or bond.[1] However, equitable estoppel or estoppel in pais is distinguished from technical estoppel in that it arises out of the acts and conduct of the party estopped and not from a record, deed, or bond.[2] It differs also in certain particulars from various legal bars that are in some respects analogous to it and that have substantially the same practical operation and to which the term "estoppel" is frequently applied but which are more properly designated as "quasi estoppels."[3]

"Quasi estoppel" applies when it would be unconscionable to allow a party to assert a right that is inconsistent with a prior position.[4] Although equitable estoppel is similar to quasi-estoppel in form, in function equitable estoppel seeks to protect the parties' reasonable expectations whereas quasi-estoppel seeks to protect the integrity of litigation.[5] Moreover, unlike equitable estoppel, quasi estoppel does not require as a necessary ingredient the concealment or misrepresentation of existing facts[6] or actual reliance by the other.[7] Quasi estoppels are sometimes said to include such matters as the doctrine of "election"—the principle that precludes a party from asserting to another's disadvantage a right inconsistent with a position previously taken by him or her[8] —waiver,[9] ratification,[10] and laches.[11]

Although the doctrine of estoppel may operate to preclude a person from speaking the truth, it must not be confused with the doctrine of impeachment or with conduct affecting the credibility of witnesses. Because of the dire penalty existing in estoppel,

the law scrutinizes with care to determine whether the facts and circumstances distinguish the situation from a mere question of credibility or impeachment.[12]

Footnotes

1 § 26.

2 Gonzales v. Gonzales, 116 N.M. 838, 867 P.2d 1220 (Ct. App. 1993).

3 Graybar Elec. Co. v. McClave, 91 Ariz. 223, 371 P.2d 350, 3 A.L.R.3d 750 (1962).

4 Labrenz v. Burnett, 218 P.3d 993 (Alaska 2009); Weitz v. Green, 148 Idaho 851, 230 P.3d 743 (2010).

5 Sowinski v. Walker, 198 P.3d 1134 (Alaska 2008).

6 Long v. Turner, 134 F.3d 312 (5th Cir. 1998); Roxas v. Marcos, 89 Haw. 91, 969 P.2d 1209 (1998); Sagewillow, Inc. v. Idaho Dept. of Water Resources, 138 Idaho 831, 70 P.3d 669 (2003).

7 Roxas v. Marcos, 89 Haw. 91, 969 P.2d 1209 (1998); Atwood v. Smith, 143 Idaho 110, 138 P.3d 310 (2006).

8 Duncan Land & Exploration, Inc. v. Littlepage, 984 S.W.2d 318 (Tex. App. Fort Worth 1998).

9 § 35.

10 § 37.

11 § 38.

12 Lubric Oil Co. v. Drawe, 26 Ohio App. 478, 6 Ohio L. Abs. 404, 160 N.E. 93 (8th Dist. Cuyahoga County 1927).

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Part One. Estoppel

III. Equitable Estoppel or Estoppel in Pais

A. In General

2. Comparisons and Distinctions

§ 33. Judicial estoppel

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Estoppel 52(1) to 52(8)

Equitable estoppel is distinct from judicial estoppel, which precludes a party from assuming a position in a legal proceeding that is inconsistent with one previously asserted where the inconsistency would allow a party to benefit from a deliberate manipulation of the courts.[1] While equitable estoppel focuses on the relationship between the parties,[2] judicial estoppel focuses on the relationship between the litigant and the judicial system.[3] Equitable estoppel is designed to promote fairness between the parties whereas judicial estoppel seeks primarily to protect the integrity of judicial proceedings.[4] The doctrine of judicial estoppel typically applies when, among other things, a party has succeeded in persuading a court to accept that party's earlier position so that judicial acceptance of an inconsistent position in a later proceeding would create the perception that either the first or the second court has been misled.[5]

Footnotes

1 Chandler v. Samford University, 35 F. Supp. 2d 861 (N.D. Ala. 1999).
For a more detailed discussion of judicial estoppel, see §§ 62, 67.

2 Chandler v. Samford University, 35 F. Supp. 2d 861 (N.D. Ala. 1999);
Ex parte First Alabama Bank, 883 So. 2d 1236 (Ala. 2003), as modified on denial of reh'g, (Nov. 21, 2003);
Wabash Grain, Inc. v. Smith, 700 N.E.2d 234 (Ind. Ct. App. 1998); City of New York v. Black Garter, 179 Misc. 2d 597, 685 N.Y.S.2d 606 (Sup 1999), aff'd, 273 A.D.2d 188, 709 N.Y.S.2d 110 (2d Dep't 2000).

3 Ex parte First Alabama Bank, 883 So. 2d 1236 (Ala. 2003), as modified on denial of reh'g, (Nov. 21, 2003); Wabash Grain, Inc. v. Smith, 700 N.E.2d 234 (Ind. Ct. App. 1998); City of New York v. Black Garter, 179 Misc. 2d 597, 685 N.Y.S.2d 606 (Sup 1999), aff'd, 273 A.D.2d 188, 709 N.Y.S.2d 110 (2d Dep't 2000).

4 Whitacre Partnership v. Biosignia, Inc., 358 N.C. 1, 591 S.E.2d 870 (2004).

5 Reed Elsevier, Inc. v. Muchnick, 130 S. Ct. 1237, 176 L. Ed. 2d 18 (2010).

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Part One. Estoppel

III. Equitable Estoppel or Estoppel in Pais

A. In General

2. Comparisons and Distinctions

§ 34. Promissory estoppel

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Estoppel 52(1) to 52(8)

Although promissory estoppel is a quasi-contractual or equitable doctrine,[1] and indeed is a creature of equity,[2] promissory estoppel is distinct or differs from equitable estoppel.[3]

Promissory estoppel involves a clear and definite promise while equitable estoppel involves only representations and inducements.[4] Promissory estoppel is applicable to promises while equitable estoppel is applicable to misstatements of fact.[5] The representations at issue in promissory estoppel go to future intent while equitable estoppel involves statement of past or present fact.[6] The doctrine of equitable estoppel, as distinguished from the doctrine of promissory estoppel, ordinarily is used defensively and requires a misrepresentation as to a past or present fact.[7] A claim is more appropriately analyzed under the doctrine of promissory estoppel, not equitable estoppel, where representations upon which the plaintiff allegedly relied are more akin to statements of future intent than past or present fact.[8] It is also said that equitable estoppel lies in tort while promissory estoppel lies in contract.[9] The primary difference between promissory and equitable estoppels is that the former is offensive and can be used for the affirmative enforcement of a promise whereas the latter is defensive and can be used only for preventing the opposing party from raising a particular claim or defense.[10] The major distinction between equitable estoppel and promissory estoppel is that the former is available only as a defense while promissory estoppel can be used as the basis of a cause of action for damages.[11] Whereas promissory estoppel is used offensively, to create a cause of action, equitable estoppel functions defensively to bar a party from raising a defense or objection it otherwise would have or from instituting an action that it is entitled to institute.[12] An absence of a clear and definite promise does not preclude the application of the doctrine of equitable estoppel as opposed to promissory estoppel.[13]

CUMULATIVE SUPPLEMENT

Cases:

Under California law, the doctrine of equitable estoppel, also known as promissory estoppel, is founded on concepts of equity and fair dealing; it provides that a person may not deny the existence of a state of facts if he intentionally led another to believe a particular circumstance to be true and to rely upon such belief to his detriment. San Francisco Bay Area Rapid Transit District v. General Reinsurance Corporation, 111 F. Supp. 3d 1055 (N.D. Cal. 2015).

Student's claims that she paid tuition for the opportunity to defend a thesis if it were deemed passable, that her thesis was deemed passable, and that she was deprived of the opportunity to so defend her thesis were sufficient to alleged detrimental reliance, as required to state a claim for promissory estoppel under Missouri law. Robbe v. Webster University, 98 F. Supp. 3d 1030 (E.D. Mo. 2015).

Prospective mortgagor's payment of nonrefundable $50,000 application fee, together with $100,000 down payment that specifically applied to the expenses incurred by prospective mortgage lender, did not render the lender an escrow agent and thus did not create any confidential or fiduciary relationship between mortgagor and lender that could support mortgagor's promissory estoppel claim against lender after transaction failed to be completed, where matter involved an arm's length business relationship between sophisticated parties. King Penguin Opportunity Fund III, LLC v. Spectrum Group Management LLC, 187 A.D.3d 688, 135 N.Y.S.3d 363 (1st Dep't 2020).

Doctrines of equitable estoppel and promissory estoppel were not applicable to alleged oral agreement for the sale of an entity which owned and managed an apartment building, where the complaint did not allege any inequitable or unconscionable injury. N.Y. General Obligations Law § 5-703(1). Streit v. Bombart, 187 A.D.3d 529, 134 N.Y.S.3d 10 (1st Dep't 2020).

[END OF SUPPLEMENT]

Footnotes

1 Dailey v. Craigmyle & Son Farms, L.L.C., 177 Ohio App. 3d 439, 2008-Ohio-4034, 894 N.E.2d 1301 (4th Dist. Adams County 2008).

2 Olson v. Synergistic Technologies Business Systems, Inc., 628 N.W.2d 142 (Minn. 2001).

3 Barnhart v. New York Life Ins. Co., 141 F.3d 1310 (9th Cir. 1998) (applying Washington law); Cossack v. Burns, 970 F. Supp. 108 (N.D. N.Y. 1997); Board of County Com'rs of Summit County v. DeLozier, 917 P.2d 714 (Colo. 1996); Sullivan v. Porter, 2004 ME 134, 861 A.2d 625 (Me. 2004); Youngblood v. Auto-Owners Ins. Co., 2007 UT 28, 158 P.3d 1088 (Utah 2007).
For a more detailed discussion of promissory estoppel, see §§ 51 to 56.

4 Guinness Import Co. v. Mark VII Distributors, Inc., 153 F.3d 607 (8th Cir. 1998) (applying Minnesota law); Cossack v. Burns, 970 F. Supp. 108 (N.D. N.Y. 1997).

5 Board of County Com'rs of Summit County v. DeLozier, 917 P.2d 714 (Colo. 1996); Chrysler Credit Corp. v. Bert Cote's L/A Auto Sales, Inc., 1998 ME 53, 707 A.2d 1311 (Me. 1998).

6 Barnhart v. New York Life Ins. Co., 141 F.3d 1310 (9th Cir. 1998) (applying Washington law); Dunkin' Donuts Inc. v. Panagakos, 5 F. Supp. 2d 57 (D. Mass. 1998); Cossack v. Burns, 970 F. Supp. 108 (N.D. N.Y. 1997); Board of County Com'rs of Summit County v. DeLozier, 917 P.2d 714 (Colo. 1996); Chrysler Credit Corp. v. Bert Cote's L/A Auto Sales, Inc., 1998 ME 53, 707 A.2d 1311 (Me. 1998).

7 Chrysler Credit Corp. v. Bert Cote's L/A Auto Sales, Inc., 1998 ME 53, 707 A.2d 1311 (Me. 1998).

8 Barnhart v. New York Life Ins. Co., 141 F.3d 1310 (9th Cir. 1998).

9 Arenberg v. Central United Life Ins. Co., 18 F. Supp. 2d 1167 (D. Colo. 1998); Board of County Com'rs of Summit County v. DeLozier, 917 P.2d 714 (Colo. 1996).

10 Alaska Trademark Shellfish, LLC v. State, Dept. of Fish and Game, 172 P.3d 764 (Alaska 2007).

11 Northrop Grumman Corp. v. U.S., 42 Fed. Cl. 1 (1998); Chrysler Credit Corp. v. Bert Cote's L/A Auto Sales, Inc., 1998 ME 53, 707 A.2d 1311 (Me. 1998).

12 Northrop Grumman Corp. v. U.S., 42 Fed. Cl. 1 (1998); Youngblood v. Auto-Owners Ins. Co., 2007 UT 28, 158 P.3d 1088 (Utah 2007).

13 In re David W., 52 Conn. App. 576, 727 A.2d 264 (1999), judgment rev'd on other grounds, 254 Conn. 676, 759 A.2d 89 (2000).

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Part One. Estoppel

III. Equitable Estoppel or Estoppel in Pais

A. In General

2. Comparisons and Distinctions

§ 35. Waiver

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Estoppel 52(1), 52.10(1)

Although waiver and estoppel are closely akin,[1] and the terms "estoppel" and "waiver" are often loosely used interchangeably,[2] nevertheless, they are separate doctrines.[3] Indeed, there are well-recognized distinctions between the two,[4] and one of them may exist without or apart from the other.[5]

Under some circumstances, a waiver may amount to an estoppel, but it does not necessarily do so.[6] Although a waiver in a particular instance may be in the nature of an equitable estoppel and is maintained on similar principles, they are not convertible terms.[7]

A "waiver" is the voluntary surrender or relinquishment of some known right, benefit, or advantage, and "estoppel" is the inhibition to assert it.[8] Specifically, with regard to the distinctions between waiver and estoppel, a waiver is the intentional abandonment or relinquishment of a known right, and an intent to waive must be shown by unequivocal acts or conduct that are inconsistent with any intention other than to waive,[9] whereas an equitable estoppel may arise even though there was no intention on the part of the party estopped to relinquish or change any existing right.[10] The intent to relinquish a right is a necessary element of waiver but not of estoppel while detrimental reliance is a necessary element of estoppel but not of waiver.[11] Estoppel, unlike waiver, requires the reliance of one party on another.[12] Equitable estoppel focuses on a party's detrimental reliance on another party's conduct while a waiver analysis focuses on a party's unequivocal intent to relinquish a known right.[13] Prejudice to the other party is one of the essential elements of an equitable estoppel[14] whereas a waiver does not necessarily imply that

the party asserting it has been misled to his or her prejudice or into an altered position.[15] Among other distinctions, waiver involves the act and conduct of only one of the parties,[16] but equitable estoppel involves the conduct of both parties[17] since it is based upon some misleading conduct or language of one person and reliance thereon by another who is misled thereby to his or her prejudice.[18] It is generally held that a waiver must be accompanied by a consideration where the elements of estoppel are not shown,[19] but an equitable estoppel need not be supported by any consideration, agreement, or legal obligation.[20]

Footnotes

1 Diversified Financial Systems Inc. v. Binstock, 1998 ND 61, 575 N.W.2d 677 (N.D. 1998).
Generally, as to waiver, see §§ 183 to 186.

2 Potesta v. U.S. Fidelity & Guar. Co., 202 W. Va. 308, 504 S.E.2d 135 (1998); Milas v. Labor Ass'n of Wisconsin, Inc., 214 Wis. 2d 1, 571 N.W.2d 656 (1997).
That this is particularly so with regard to the waiver of, or estoppel to assert, forfeitures under and conditions in insurance policies, see Am. Jur. 2d, Insurance §§ 1542 to 1550.

3 Blake v. Irwin, 913 S.W.2d 923 (Mo. Ct. App. W.D. 1996);
Glidden Co. v. Lumbermens Mut. Cas. Co., 112 Ohio St. 3d 470, 2006-Ohio-6553, 861 N.E.2d 109 (2006).

4 Dunkin' Donuts Inc. v. Panagakos, 5 F. Supp. 2d 57 (D. Mass. 1998); Diversified Financial Systems Inc. v. Binstock, 1998 ND 61, 575 N.W.2d 677 (N.D. 1998); Chubb v. Ohio Bur. of Workers' Comp., 81 Ohio St. 3d 275, 1998-Ohio-628, 690 N.E.2d 1267 (1998); Milas v. Labor Ass'n of Wisconsin, Inc., 214 Wis. 2d 1, 571 N.W.2d 656 (1997).

5 Milas v. Labor Ass'n of Wisconsin, Inc., 214 Wis. 2d 1, 571 N.W.2d 656 (1997).

6 Chubb v. Ohio Bur. of Workers' Comp., 81 Ohio St. 3d 275, 1998-Ohio-628, 690 N.E.2d 1267 (1998).

7 Chubb v. Ohio Bur. of Workers' Comp., 81 Ohio St. 3d 275, 1998-Ohio-628, 690 N.E.2d 1267 (1998); Potesta v. U.S. Fidelity & Guar. Co., 202 W. Va. 308, 504 S.E.2d 135 (1998).

8 Channel v. Loyacono, 954 So. 2d 415 (Miss. 2007).

9 Harmony at Madrona Park Owners Ass'n v. Madison Harmony Development, Inc., 143 Wash. App. 345, 177 P.3d 755 (Div. 1 2008).

10 Dunkin' Donuts Inc. v. Panagakos, 5 F. Supp. 2d 57 (D. Mass. 1998); In re Kids Creek Partners, L.P., 220 B.R. 963 (Bankr. N.D. Ill. 1998), decision aff'd, 233 B.R. 409 (N.D. Ill. 1999), aff'd, 200 F.3d 1070 (7th Cir. 2000); Chubb v. Ohio Bur. of Workers' Comp., 81 Ohio St. 3d 275, 1998-Ohio-628, 690 N.E.2d 1267 (1998); Milas v. Labor Ass'n of Wisconsin, Inc., 214 Wis. 2d 1, 571 N.W.2d 656 (1997).
Generally, as to intention of party estopped, see § 45.

11 ABC, Inc. v. PrimeTime 24, Joint Venture, 17 F. Supp. 2d 478 (M.D. N.C. 1998), aff'd in part, vacated in part on other grounds, 184 F.3d 348 (4th Cir. 1999).

12 Knorr v. Smeal, 178 N.J. 169, 836 A.2d 794 (2003).

13 Strickland v. Strickland, 375 S.C. 76, 650 S.E.2d 465 (2007).

14 § 76.

15 Potesta v. U.S. Fidelity & Guar. Co., 202 W. Va. 308, 504 S.E.2d 135 (1998).

16 Morton v. Resolution Trust Corp., 918 F. Supp. 985 (S.D. Miss. 1995); Sanders v. Gravel Products, Inc., 2008 ND 161, 755 N.W.2d 826 (N.D. 2008); Chubb v. Ohio Bur. of Workers' Comp., 81 Ohio St. 3d 275, 1998-Ohio-628, 690 N.E.2d 1267 (1998).

17 Sanders v. Gravel Products, Inc., 2008 ND 161, 755 N.W.2d 826 (N.D. 2008); Chubb v. Ohio Bur. of Workers' Comp., 81 Ohio St. 3d 275, 1998-Ohio-628, 690 N.E.2d 1267 (1998); Milas v. Labor Ass'n of Wisconsin, Inc., 214 Wis. 2d 1, 571 N.W.2d 656 (1997).

18 Dunkin' Donuts Inc. v. Panagakos, 5 F. Supp. 2d 57 (D. Mass. 1998); In re Kids Creek Partners, L.P., 220 B.R. 963 (Bankr. N.D. Ill. 1998), decision aff'd, 233 B.R. 409 (N.D. Ill. 1999), aff'd, 200 F.3d 1070 (7th Cir. 2000); City of Topeka v. Watertower Place Development Group, 265 Kan. 148, 959 P.2d 894 (1998).

19 § 193.

20 § 41.

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28 Am. Jur. 2d Estoppel and Waiver § 36

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III. Equitable Estoppel or Estoppel in Pais

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2. Comparisons and Distinctions

§ 36. Waiver—Implied waiver

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Estoppel 52(1), 52.10(1)

Although the dividing line between waiver and equitable estoppel is one fairly easy to recognize and preserve when it is an express waiver that is under consideration,[1] the line is somewhat less distinct between such an estoppel and a waiver implied from conduct.[2] Where an implied waiver is involved, the distinction between waiver and estoppel is close, and sometimes, the doctrines merge into each other with almost imperceptible gradations so that it is difficult to determine the exact point where one doctrine ends and the other begins.[3] When the term "waiver" is so used, however, the elements of an estoppel almost invariably appear, and it is quite apparent that it is employed to designate not a pure waiver but one that has come into an existence of effectiveness through the application of the principles underlying estoppels.[4] Indeed, in some jurisdictions at least, the doctrine of implied waiver applies only to situations involving circumstances equivalent to an estoppel, and the one claiming the waiver must show that he or she was misled and prejudiced thereby in order to prevail.[5]

Footnotes

1 Bernhard v. Rochester German Ins. Co., 79 Conn. 388, 65 A. 134 (1906).

2 Generally, as to waivers implied from conduct, see §§ 183 to 186.

3 Milas v. Labor Ass'n of Wisconsin, Inc., 214 Wis. 2d 1, 571 N.W.2d 656 (1997).

4 Mitchell v. American Mut. Ass'n, 226 Mo. App. 696, 46 S.W.2d 231 (1932).

5 Brown v. Taylor, 120 N.M. 302, 901 P.2d 720 (1995).

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§ 37. Assent, acquiescence, and ratification

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Estoppel 52(1), 52(2)

There are distinctions between estoppel, acquiescence, assent, and ratification. The term "estoppel" is not a synonym for mere "assent."[1] While both acquiescence and ratification are frequently spoken of as estoppel, strictly speaking, neither can be more than a part of an estoppel since an estoppel is a legal consequence, a right arising from acts or conduct, while acquiescence and ratification are but facts presupposing a situation incomplete in its legal aspects.[2]

Estoppel differs in essential particulars from ratification;[3] ratification is election rather than estoppel, and it operates not against the party ratifying but on the contract, making it as if perfect from the beginning.[4] The substance of estoppel is the inducement to another to act to his or her prejudice while the substance of ratification is a confirmation by one of an act performed by another without authority.[5] It has been stated that the distinction between being bound by reason of ratification and being bound by an estoppel is that in the former case the party is bound because he or she intended to be; in the latter, he or she is bound notwithstanding there was no such intention because the other party will be prejudiced and defrauded by his or her conduct unless the law treats him or her as legally bound.[6]

CUMULATIVE SUPPLEMENT

Cases:

Under New York law, "ratification" is the act of knowingly giving sanction or affirmance to an act which would otherwise be unauthorized and not binding; while acquiescence may give rise to an implied ratification, ratification must be performed with full knowledge of the material facts related to the transaction, and the assent must be clearly established and may not be inferred from doubtful or equivocal acts or language. Sher v. RBC Capital Markets, LLC, 539 B.R. 260 (D. Md. 2015).

Ratification may be established by affirmative acts or inaction. Estate of St. Martin v. Hixson, 145 So. 3d 1124 (Miss. 2014).

[END OF SUPPLEMENT]

Footnotes

1 Holmes v. Hrobon, 93 Ohio App. 1, 50 Ohio Op. 178, 61 Ohio L. Abs. 113, 61 Ohio L. Abs. 241, 103 N.E.2d 845 (2d Dist. Franklin County 1951), judgment aff'd in part, rev'd in part on other grounds, 158 Ohio St. 508, 49 Ohio Op. 450, 110 N.E.2d 574 (1953).
As to the distinction between ratification and estoppel with respect to the acts of agents, see Am. Jur. 2d, Agency § 176.

2 Holmes v. Hrobon, 93 Ohio App. 1, 50 Ohio Op. 178, 61 Ohio L. Abs. 113, 61 Ohio L. Abs. 241, 103 N.E.2d 845 (2d Dist. Franklin County 1951), judgment aff'd in part, rev'd in part on other grounds, 158 Ohio St. 508, 49 Ohio Op. 450, 110 N.E.2d 574 (1953).

3 Carlile v. Harris, 38 S.W.2d 622 (Tex. Civ. App. Galveston 1931).

4 Sawtelle v. Tatone, 105 N.H. 398, 201 A.2d 111 (1964).

5 Lugue v. Hercules, Inc., 12 F. Supp. 2d 1351 (S.D. Ga. 1997).

6 Carlile v. Harris, 38 S.W.2d 622 (Tex. Civ. App. Galveston 1931).

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2. Comparisons and Distinctions

§ 38. Laches

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Estoppel 52(1), 52(2)

Forms

Am. Jur. Pleading and Practice Forms, Pleading § 95 (Answer—defense—laches)

Both estoppel and the equitable defense of laches share the elements of delay and resulting prejudice to the other party,[1] and both estoppel and laches are bars that, in certain circumstances, may be raised to defeat a right or claim that a party would otherwise have.[2] The doctrines of laches and estoppel are closely allied,[3] especially where, as the case generally is, delay alone is not regarded as constituting laches but only delay that places another at a disadvantage.[4] Indeed, a claim asserted following unreasonable delay may be barred by the equitable doctrine of laches.[5] Laches is sometimes spoken of as a specie of estoppel[6] and is often held to be an element in estoppel.[7] On the other hand, it is said that estoppel is to a certain extent an element of the doctrine of laches.[8] The terms, however, are clearly not synonymous[9] since laches is a doctrine peculiar to courts of equity while the doctrine of estoppel is applied as readily at law as in equity.[10] Laches bears a family resemblance to estoppel but is different in concept.[11] Moreover, while equitable estoppel requires the adverse party to change his or her position in reliance, laches requires no affirmative conduct on the part of the adverse party.[12] While laches focuses on the reasonableness of the plaintiff's delay in bringing a suit and the seriousness of the prejudice to the defendant, equitable estoppel focuses on what the defendant

has been led to reasonably believe from the plaintiff's conduct.[13] Laches arises out of delay while estoppel may arise from various conduct including delay.[14] Moreover, laches may only be used by the defendant while estoppel may be used by either party.[15] A finding of laches bars an award for past damages but not injunctive relief; however, equitable estoppel bars all relief.[16]

Footnotes

1 Merritt v. Merritt, 2003 OK 68, 73 P.3d 878 (Okla. 2003).

2 Loral Fairchild Corp. v. Victor Co. of Japan, Ltd., 931 F. Supp. 1014 (E.D. N.Y. 1996), aff'd, 181 F.3d 1313 (Fed. Cir. 1999); Feinzig v. Ficksman, 42 Mass. App. Ct. 113, 674 N.E.2d 1329 (1997).
For the general discussion of the doctrine of laches, see Am. Jur. 2d, Equity §§ 107 to 110.

3 Am. Jur. 2d, Equity § 114.

4 Loral Fairchild Corp. v. Victor Co. of Japan, Ltd., 931 F. Supp. 1014 (E.D. N.Y. 1996), aff'd, 181 F.3d 1313 (Fed. Cir. 1999); Miller v. Sandvick, 921 S.W.2d 517 (Tex. App. Amarillo 1996), writ denied, (Oct. 18, 1996).

5 Dreikausen v. Zoning Bd. of Appeals of City of Long Beach, 98 N.Y.2d 165, 746 N.Y.S.2d 429, 774 N.E.2d 193 (2002).

6 Keylon v. Arnold, 213 Ark. 130, 209 S.W.2d 459 (1948); Hallam v. Gladman, 132 So. 2d 198 (Fla. Dist. Ct. App. 2d Dist. 1961).

7 § 59.

8 Sawtelle v. Tatone, 105 N.H. 398, 201 A.2d 111 (1964).

9 Loral Fairchild Corp. v. Victor Co. of Japan, Ltd., 931 F. Supp. 1014 (E.D. N.Y. 1996), aff'd, 181 F.3d 1313 (Fed. Cir. 1999); Vanice v. Oehm, 255 Neb. 166, 582 N.W.2d 615 (1998); Brown v. Taylor, 120 N.M. 302, 901 P.2d 720 (1995); Miller v. Sandvick, 921 S.W.2d 517 (Tex. App. Amarillo 1996), writ denied, (Oct. 18, 1996).

10 § 147.

11 Feinzig v. Ficksman, 42 Mass. App. Ct. 113, 674 N.E.2d 1329 (1997).

12 Hot Wax, Inc. v. Turtle Wax, Inc., 27 F. Supp. 2d 1043 (N.D. Ill. 1998), aff'd, 191 F.3d 813 (7th Cir. 1999); Vanice v. Oehm, 255 Neb. 166, 582 N.W.2d 615 (1998).

13 Altech Controls Corp. v. E.I.L. Instruments, Inc., 33 F. Supp. 2d 546 (S.D. Tex. 1998); Brown v. Taylor, 120 N.M. 302, 901 P.2d 720 (1995).

14 Feinzig v. Ficksman, 42 Mass. App. Ct. 113, 674 N.E.2d 1329 (1997).

15 Feinzig v. Ficksman, 42 Mass. App. Ct. 113, 674 N.E.2d 1329 (1997).

16 Hot Wax, Inc. v. Turtle Wax, Inc., 27 F. Supp. 2d 1043 (N.D. Ill. 1998), aff'd, 191 F.3d 813 (7th Cir. 1999).

28 Am. Jur. 2d Estoppel and Waiver One III B Refs.

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Research References

West's Key Number Digest

West's Key Number Digest, Estoppel 52.15 to 60, 63 to 65, 70, 81 to 85, 88, 89.1, 90, 92 to 96

A.L.R. Library

A.L.R. Index, Collateral Estoppel
A.L.R. Index, Equitable Estoppel
A.L.R. Index, Estoppel and Waiver
A.L.R. Index, Promissory Estoppel
West's A.L.R. Digest, Estoppel 52.15 to 60, 63 to 65, 70, 81 to 85, 88, 89.1, 90, 92 to 96

Trial Strategy

Detrimental Reliance on Promise, 4 Am. Jur. Proof of Facts 2d 641

Forms

Am. Jur. Legal Forms 2d §§ 102:4, 102:5

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B. Elements, Requisites, and Grounds

1. In General

§ 39. Generally

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Estoppel 52.15 to 60

The doctrine of equitable estoppel is founded on concepts of equity and fair dealing and provides that a person may not deny the existence of a state of facts if he or she intentionally led another to believe a particular circumstance to be true and to rely upon such belief to his or her detriment.[1]

The elements that must be satisfied for the doctrine of equitable estoppel to apply include:

(1) conduct that amounts to a false representation or concealment of material facts or, at least, that is calculated to convey the impression that the facts are otherwise than, and inconsistent with, those that the party subsequently attempts to assert;[2]

(2) the intention, or at least the expectation, that such conduct shall be acted upon by, or influence, the other party or other persons;[3]

(3) knowledge, actual, constructive, or implied, of the real facts;[4]

(4) lack of knowledge and of the means of knowledge of the truth as to the facts in question;[5]

(5) reliance, in good faith, upon the conduct or statements of the party to be estopped;[6]

(6) action or inaction based thereon of such a character as to change the position or status of the party claiming the estoppel;[7] and

(7) resulting in detriment,[8] prejudice,[9] or pecuniary disadvantage unless the first party is estopped from asserting an otherwise valid right in contradiction to his or her earlier representation.[10]

In some jurisdictions, the reliance must be foreseeable by the promisor.[11]

The elements of equitable estoppel have also been stated to comprise the use of misleading words, conduct, or silence by the party against whom the estoppel is asserted; unambiguous proof of reasonable reliance upon the misrepresentation by the party asserting the estoppel; and lack of a duty to inquire on the party asserting the estoppel.[12] In addition, the elements of equitable estoppel have been stated to consist of a statement, admission, act, or failure to act by one party inconsistent with a claim later asserted; reasonable action or inaction by the other party taken or not taken on the basis of the first party's statement, admission, act, or failure to act; and injury to the second party that would result from allowing the first party to contradict or repudiate such statement, admission, act, or failure to act.[13]

Practice Tip:

These elements must be shown by clear and convincing evidence,[14] and there can be no estoppel where one of these elements is missing.[15]

CUMULATIVE SUPPLEMENT

Cases:

Under California law, estoppel claim consists of the following elements: (1) a representation or concealment of material facts, (2) made with knowledge, actual or virtual, of the facts, (3) to a party ignorant, actually and permissibly, of the truth, (4) with the intent, actual or virtual, that the latter act upon it, and (5) the party must have been induced to act upon it. Shahani v. United Commercial Bank, 457 B.R. 775 (N.D. Cal. 2011).

Under Massachusetts law, the doctrine of equitable estoppel may be invoked when one person makes a definite misrepresentation of fact to another person having reason to believe that the other will rely upon it and the other in reasonable reliance upon it acts to his or her detriment. Kimmel & Silverman, P.C. v. Porro, 53 F. Supp. 3d 325 (D. Mass. 2014).

Elements required to prove equitable estoppel, under Mississippi law, are as follows: conduct and acts, language or silence, amounting to a representation or concealment of material facts, with knowledge or imputed knowledge of such facts, with the intent that representation or silence, or concealment be relied upon, with the other party's ignorance of the true facts, and reliance to his damage upon the representation or silence. First Trinity Capital Corp. v. Catlin Specialty Ins., 990 F. Supp. 2d 642 (S.D. Miss. 2013), appeal dismissed, (5th Circ. 14-60021)(Mar. 27, 2014).

Under Illinois law, party claiming estoppel must prove: (1) other person misrepresented or concealed material facts; (2) other person knew at time he or she made representations that they were untrue; (3) party claiming estoppel did not know that representations were untrue when they were made and when that party decided to act, or not, upon representations; (4) other

person intended or reasonably expected that party claiming estoppel would determine whether to act, or not, based upon representations; (5) party claiming estoppel reasonably relied upon representations in good faith to his or her detriment; and (6) party claiming estoppel would be prejudiced by his or her reliance on representations if other person is permitted to deny truth thereof. Mohamed v. Donald J. Nolan, Ltd., 967 F. Supp. 2d 647 (E.D. N.Y. 2013).

Under Ohio law, a party may invoke the doctrine of equitable estoppel where it has relied on conduct of an adversary in such a manner as to change his position for the worse and that reliance was reasonable in that the party claiming estoppel did not know and could not have known that its adversary's conduct was misleading. DRFP, LLC v. Republica Bolivariana de Venezuela, 945 F. Supp. 2d 890 (S.D. Ohio 2013).

To make out viable estoppel claim, plaintiff must have reasonably relied on defendant's misrepresentations to his detriment. Santana-Colon v. Houghton Mifflin Harcout Pub. Co., 81 F. Supp. 3d 129 (D.P.R. 2014).

Equitable estoppel will only be applied when all four elements are proven by clear and convincing evidence: (1) defendant made false representations to or concealed material facts from plaintiff; (2) plaintiff did not have knowledge of the real facts; (3) misrepresentations or concealment was made with the intention that it should be acted upon; and (4) plaintiff relied upon those misrepresentations or concealment to its prejudice or injury. East Side Lutheran Church of Sioux Falls v. NEXT, Inc., 2014 SD 59, 852 N.W.2d 434 (S.D. 2014).

The test for equitable estoppel consists of four elements: (1) action or non-action, (2) on the part of one against whom estoppel is asserted, (3) which induces reasonable reliance thereon by the other, either in action or non-action, and (4) which is to his or her detriment. State ex rel. Greer V. Wiedenhoeft, 2014 WI 19, 353 Wis. 2d 307, 845 N.W.2d 373 (2014).

[END OF SUPPLEMENT]

Footnotes

1 Sanguansak v. Myers, 178 Cal. App. 3d 110, 223 Cal. Rptr. 490 (1st Dist. 1986).

2 Thurston v. Roanoke City School Bd., 26 F. Supp. 2d 882, 131 Ed. Law Rep. 179 (W.D. Va. 1998); WSG West Palm Beach Development, LLC v. Blank, 990 So. 2d 708 (Fla. Dist. Ct. App. 4th Dist. 2008), review denied, 6 So. 3d 608 (Fla. 2009); Ogden v. Griffith, 149 Idaho 489, 236 P.3d 1249 (2010); State ex rel. Chemco Industries, Inc. v. Employers Mut. Cas. Co., 303 Ill. App. 3d 898, 237 Ill. Dec. 184, 708 N.E.2d 1224 (4th Dist. 1999); Becton, Dickinson and Co. v. Nebraska Dept. of Revenue, 276 Neb. 640, 756 N.W.2d 280 (2008); Friedland v. Gales, 131 N.C. App. 802, 509 S.E.2d 793 (1998); Facer v. Toledo, 94 Ohio Misc. 2d 1, 702 N.E.2d 1267 (C.P. 1998); Carter v. Schuster, 2009 OK 94, 227 P.3d 149 (Okla. 2009), as corrected, (Dec. 18, 2009) and as corrected, (Dec. 22, 2009); Maher v. Tietex Corp., 331 S.C. 371, 500 S.E.2d 204 (Ct. App. 1998); Wilcox v. Vermeulen, 2010 SD 29, 781 N.W.2d 464 (S.D. 2010); First American Title Ins. Co. v. Firriolo, 225 W. Va. 688, 695 S.E.2d 918 (2010).
As to what constitutes a representation, generally, see §§ 48 to 50.

3 Lehman v. U.S., 154 F.3d 1010, 41 Fed. R. Serv. 3d 1338 (9th Cir. 1998); Zacharin v. U.S., 43 Fed. Cl. 185 (1999), aff'd, 213 F.3d 1366 (Fed. Cir. 2000); Miller County v. Opportunities, Inc., 334 Ark. 88, 971 S.W.2d 781 (1998); City of Goleta v. Superior Court, 40 Cal. 4th 270, 52 Cal. Rptr. 3d 114, 147 P.3d 1037 (2006); Key Properties Group, LLC v. City of Milford, 995 A.2d 147 (Del. 2010); Ogden v. Griffith, 149 Idaho 489, 236 P.3d 1249 (2010); State ex rel. Chemco Industries, Inc. v. Employers Mut. Cas. Co., 303 Ill. App. 3d 898, 237 Ill. Dec. 184, 708 N.E.2d 1224 (4th Dist. 1999); Wabash Grain, Inc. v. Smith, 700 N.E.2d 234 (Ind. Ct. App. 1998); Becton, Dickinson and Co. v. Nebraska Dept. of Revenue, 276 Neb. 640, 756 N.W.2d 280 (2008); Friedland v. Gales, 131 N.C. App. 802, 509 S.E.2d 793 (1998); Carter v. Schuster, 2009 OK 94, 227 P.3d 149 (Okla. 2009), as corrected, (Dec. 18, 2009) and as corrected, (Dec. 22, 2009); McNulty v. City of Providence, 994 A.2d 1221 (R.I. 2010); Maher v. Tietex Corp., 331 S.C. 371, 500 S.E.2d 204 (Ct. App.

1998); Wilcox v. Vermeulen, 2010 SD 29, 781 N.W.2d 464 (S.D. 2010); In re Letourneau, 168 Vt. 539, 726 A.2d 31 (1998); First American Title Ins. Co. v. Firriolo, 225 W. Va. 688, 695 S.E.2d 918 (2010).

As to intent, generally, see § 45.

4 Lehman v. U.S., 154 F.3d 1010, 41 Fed. R. Serv. 3d 1338 (9th Cir. 1998); Zacharin v. U.S., 43 Fed. Cl. 185 (1999), aff'd, 213 F.3d 1366 (Fed. Cir. 2000); Miller County v. Opportunities, Inc., 334 Ark. 88, 971 S.W.2d 781 (1998); Golden Day Schools, Inc. v. Department of Education, 69 Cal. App. 4th 681, 81 Cal. Rptr. 2d 758, 131 Ed. Law Rep. 808 (3d Dist. 1999); State ex rel. Chemco Industries, Inc. v. Employers Mut. Cas. Co., 303 Ill. App. 3d 898, 237 Ill. Dec. 184, 708 N.E.2d 1224 (4th Dist. 1999); Wabash Grain, Inc. v. Smith, 700 N.E.2d 234 (Ind. Ct. App. 1998); Becton, Dickinson and Co. v. Nebraska Dept. of Revenue, 276 Neb. 640, 756 N.W.2d 280 (2008); Friedland v. Gales, 131 N.C. App. 802, 509 S.E.2d 793 (1998); Maher v. Tietex Corp., 331 S.C. 371, 500 S.E.2d 204 (Ct. App. 1998); In re Letourneau, 168 Vt. 539, 726 A.2d 31 (1998).

As to knowledge of the facts by the party to be estopped, see § 44.

5 Lehman v. U.S., 154 F.3d 1010, 41 Fed. R. Serv. 3d 1338 (9th Cir. 1998); Zacharin v. U.S., 43 Fed. Cl. 185 (1999), aff'd, 213 F.3d 1366 (Fed. Cir. 2000); Miller County v. Opportunities, Inc., 334 Ark. 88, 971 S.W.2d 781 (1998); City of Goleta v. Superior Court, 40 Cal. 4th 270, 52 Cal. Rptr. 3d 114, 147 P.3d 1037 (2006); Ogden v. Griffith, 149 Idaho 489, 236 P.3d 1249 (2010); State ex rel. Chemco Industries, Inc. v. Employers Mut. Cas. Co., 303 Ill. App. 3d 898, 237 Ill. Dec. 184, 708 N.E.2d 1224 (4th Dist. 1999); Wabash Grain, Inc. v. Smith, 700 N.E.2d 234 (Ind. Ct. App. 1998); Becton, Dickinson and Co. v. Nebraska Dept. of Revenue, 276 Neb. 640, 756 N.W.2d 280 (2008); Carter v. Schuster, 2009 OK 94, 227 P.3d 149 (Okla. 2009), as corrected, (Dec. 18, 2009) and as corrected, (Dec. 22, 2009); Wilcox v. Vermeulen, 2010 SD 29, 781 N.W.2d 464 (S.D. 2010); In re Letourneau, 168 Vt. 539, 726 A.2d 31 (1998); First American Title Ins. Co. v. Firriolo, 225 W. Va. 688, 695 S.E.2d 918 (2010).

As to lack of knowledge by the party claiming estoppel, see §§ 78, 79.

6 Lehman v. U.S., 154 F.3d 1010, 41 Fed. R. Serv. 3d 1338 (9th Cir. 1998); Zacharin v. U.S., 43 Fed. Cl. 185 (1999), aff'd, 213 F.3d 1366 (Fed. Cir. 2000); Osterkamp v. Stiles, 235 P.3d 193 (Alaska 2010); Miller County v. Opportunities, Inc., 334 Ark. 88, 971 S.W.2d 781 (1998); City of Goleta v. Superior Court, 40 Cal. 4th 270, 52 Cal. Rptr. 3d 114, 147 P.3d 1037 (2006); Key Properties Group, LLC v. City of Milford, 995 A.2d 147 (Del. 2010); WSG West Palm Beach Development, LLC v. Blank, 990 So. 2d 708 (Fla. Dist. Ct. App. 4th Dist. 2008), review denied, 6 So. 3d 608 (Fla. 2009); Ogden v. Griffith, 149 Idaho 489, 236 P.3d 1249 (2010); State ex rel. Chemco Industries, Inc. v. Employers Mut. Cas. Co., 303 Ill. App. 3d 898, 237 Ill. Dec. 184, 708 N.E.2d 1224 (4th Dist. 1999); Wabash Grain, Inc. v. Smith, 700 N.E.2d 234 (Ind. Ct. App. 1998); Hill v. Cross Country Settlements, LLC, 402 Md. 281, 936 A.2d 343 (2007); Windham v. Latco of Mississippi, Inc., 972 So. 2d 608 (Miss. 2008); Woodard v. City of Lincoln, 256 Neb. 61, 588 N.W.2d 831 (1999); Facer v. Toledo, 94 Ohio Misc. 2d 1, 702 N.E.2d 1267 (C.P. 1998); Carter v. Schuster, 2009 OK 94, 227 P.3d 149 (Okla. 2009), as corrected, (Dec. 18, 2009) and as corrected, (Dec. 22, 2009); Wilcox v. Vermeulen, 2010 SD 29, 781 N.W.2d 464 (S.D. 2010); In re Letourneau, 168 Vt. 539, 726 A.2d 31 (1998); First American Title Ins. Co. v. Firriolo, 225 W. Va. 688, 695 S.E.2d 918 (2010).

As to reliance by the party claiming estoppel, see § 74.

As to good faith of party claiming estoppel, see § 77.

7 Thurston v. Roanoke City School Bd., 26 F. Supp. 2d 882, 131 Ed. Law Rep. 179 (W.D. Va. 1998); Key Properties Group, LLC v. City of Milford, 995 A.2d 147 (Del. 2010); WSG West Palm Beach Development, LLC v. Blank, 990 So. 2d 708 (Fla. Dist. Ct. App. 4th Dist. 2008), review denied, 6 So. 3d 608 (Fla. 2009); State ex rel. Chemco Industries, Inc. v. Employers Mut. Cas. Co., 303 Ill. App. 3d 898, 237 Ill. Dec. 184, 708 N.E.2d 1224 (4th Dist. 1999); Hill v. Cross Country Settlements, LLC, 402 Md. 281, 936 A.2d 343 (2007); Windham v. Latco of Mississippi, Inc., 972 So. 2d 608 (Miss. 2008); Becton, Dickinson and Co. v. Nebraska Dept. of Revenue, 276 Neb. 640, 756 N.W.2d 280 (2008).

As to change in position or status by the party claiming estoppel, see § 75.

8 Starter Corp. v. Converse, Inc., 170 F.3d 286, 51 Fed. R. Evid. Serv. 906, 44 Fed. R. Serv. 3d 315 (2d Cir. 1999); Thurston v. Roanoke City School Bd., 26 F. Supp. 2d 882, 131 Ed. Law Rep. 179 (W.D. Va. 1998); Rubright v. Arnold, 973 P.2d 580 (Alaska 1999); Key Properties Group, LLC v. City of Milford, 995 A.2d 147 (Del. 2010); WSG West Palm Beach Development, LLC v. Blank, 990 So. 2d 708 (Fla. Dist. Ct. App. 4th Dist. 2008), review denied, 6 So. 3d 608 (Fla. 2009); Ogden v. Griffith, 149 Idaho 489, 236 P.3d 1249 (2010); Hill v. Cross Country Settlements, LLC, 402 Md. 281, 936 A.2d 343 (2007); Windham v. Latco of

Mississippi, Inc., 972 So. 2d 608 (Miss. 2008); Rockwood Bank v. Camp, 984 S.W.2d 868 (Mo. Ct. App. E.D. 1999); Carter v. Schuster, 2009 OK 94, 227 P.3d 149 (Okla. 2009), as corrected, (Dec. 18, 2009) and as corrected, (Dec. 22, 2009); Wilcox v. Vermeulen, 2010 SD 29, 781 N.W.2d 464 (S.D. 2010); Seattle Pump Co., Inc. v. Traders and General Ins. Co., 93 Wash. App. 743, 970 P.2d 361 (Div. 1 1999); First American Title Ins. Co. v. Firriolo, 225 W. Va. 688, 695 S.E.2d 918 (2010); State v. Lettice, 221 Wis. 2d 69, 585 N.W.2d 171 (Ct. App. 1998).

9 Starter Corp. v. Converse, Inc., 170 F.3d 286, 51 Fed. R. Evid. Serv. 906, 44 Fed. R. Serv. 3d 315 (2d Cir. 1999); Osterkamp v. Stiles, 235 P.3d 193 (Alaska 2010); State, Dept. of Transp. v. FirstMerit Bank, 711 So. 2d 1217 (Fla. Dist. Ct. App. 2d Dist. 1998); Ogden v. Griffith, 149 Idaho 489, 236 P.3d 1249 (2010); Hill v. Cross Country Settlements, LLC, 402 Md. 281, 936 A.2d 343 (2007); Windham v. Latco of Mississippi, Inc., 972 So. 2d 608 (Miss. 2008); Rockwood Bank v. Camp, 984 S.W.2d 868 (Mo. Ct. App. E.D. 1999); Facer v. Toledo, 94 Ohio Misc. 2d 1, 702 N.E.2d 1267 (C.P. 1998); Carter v. Schuster, 2009 OK 94, 227 P.3d 149 (Okla. 2009), as corrected, (Dec. 18, 2009) and as corrected, (Dec. 22, 2009); Wilcox v. Vermeulen, 2010 SD 29, 781 N.W.2d 464 (S.D. 2010); Seattle Pump Co., Inc. v. Traders and General Ins. Co., 93 Wash. App. 743, 970 P.2d 361 (Div. 1 1999); First American Title Ins. Co. v. Firriolo, 225 W. Va. 688, 695 S.E.2d 918 (2010); State v. Lettice, 221 Wis. 2d 69, 585 N.W.2d 171 (Ct. App. 1998).

10 Facer v. Toledo, 94 Ohio Misc. 2d 1, 702 N.E.2d 1267 (C.P. 1998).

As to loss, injury, detriment, or injury to the party claiming estoppel, see § 76.

11 Texas Property and Cas. Ins. Guar. Association/Southwest Aggregates, Inc. v. Southwest Aggregates, Inc., 982 S.W.2d 600 (Tex. App. Austin 1998).

12 Commonwealth ex rel. Pennsylvania Attorney General Corbett v. Griffin, 596 Pa. 549, 946 A.2d 668 (2008).

13 Youngblood v. Auto-Owners Ins. Co., 2007 UT 28, 158 P.3d 1088 (Utah 2007); City of Seattle v. St. John, 166 Wash. 2d 941, 215 P.3d 194 (2009).

14 § 164.

15 Laird v. Capital Cities/ABC, Inc., 68 Cal. App. 4th 727, 80 Cal. Rptr. 2d 454 (3d Dist. 1998); Winn v. Campbell, 145 Idaho 727, 184 P.3d 852 (2008); Wurl v. Polson School Dist. No. 23, 2006 MT 8, 330 Mont. 282, 127 P.3d 436, 206 Ed. Law Rep. 423 (2006); Dakota Truck Underwriters v. South Dakota Subsequent Injury Fund, 2004 SD 120, 689 N.W.2d 196 (S.D. 2004).

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§ 40. Certainty; strictness of application

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Estoppel 53, 60

Although, where its scope of operation is concerned, the doctrine of estoppel is regarded in modern days with more liberality than it formerly was, it is still the rule that estoppels must be certain to every intent[1] and are not to be taken or sustained by mere argument or doubtful inference.[2] No party ought to be precluded from making out his or her case according to its truth unless by force of some positive principle of law.[3] Hence, the doctrine of estoppel in pais must be applied strictly[4] and should not be enforced unless substantiated in every particular.[5]

Footnotes

1 Bear Creek Co. v. James, 115 Cal. App. 2d 725, 252 P.2d 723 (3d Dist. 1953); Scallan v. Simmesport State Bank, 129 So. 2d 49 (La. Ct. App. 3d Cir. 1961).

2 Bear Creek Co. v. James, 115 Cal. App. 2d 725, 252 P.2d 723 (3d Dist. 1953); Robertson v. Robertson, 61 So. 2d 499 (Fla. 1952).

3 Bear Creek Co. v. James, 115 Cal. App. 2d 725, 252 P.2d 723 (3d Dist. 1953); Scallan v. Simmesport State Bank, 129 So. 2d 49 (La. Ct. App. 3d Cir. 1961).

4 Bear Creek Co. v. James, 115 Cal. App. 2d 725, 252 P.2d 723 (3d Dist. 1953); Scallan v. Simmesport State Bank, 129 So. 2d 49 (La. Ct. App. 3d Cir. 1961).

5 Bear Creek Co. v. James, 115 Cal. App. 2d 725, 252 P.2d 723 (3d Dist. 1953); Scallan v. Simmesport State Bank, 129 So. 2d 49 (La. Ct. App. 3d Cir. 1961).

As to sufficiency of evidence, see §§ 164, 165.

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§ 41. Consideration, agreement, or obligation

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Estoppel 52.15

An estoppel does not require a consideration.[1] Moreover, not only is it not necessary that an equitable estoppel rest upon a consideration but it is also not necessary that it rest on an agreement or legal obligation.[2]

Footnotes

1 Margules v. Crim, 331 S.W.2d 372 (Tex. Civ. App. Amarillo 1959).

2 Treadwell v. Henderson, 58 N.M. 230, 269 P.2d 1108 (1954).

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2. As Related to Party to Be Estopped

a. In General

§ 42. Generally

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Estoppel 52.15 to 60

The elements of equitable estoppel, as they relate to the party being estopped, are: (1) conduct that amounts to a false representation or concealment of material facts or at least that is calculated to convey the impression that the facts are otherwise than, and inconsistent with, those that the party subsequently attempts to assert; (2) the intention, or at least the expectation, that such conduct will be acted upon by, or influence, the other party or other persons; and (3) knowledge, actual or constructive, of the real facts.[1]

Only the one who has caused the reliance can be estopped.[2]

CUMULATIVE SUPPLEMENT

Cases:

Claim by daughters of deceased seeking interest from personal representatives for compensation payments made by personal representatives to themselves prior to obtaining court approval in estate administration was not barred by equitable estoppel, where, in making payments to themselves without obtaining prior court approval, the personal representatives violated their statutory duty, and estate-tax return received by daughters described the amount the personal representatives intended to claim as compensation, not amount they have already paid themselves. Code 1975, § 43–2–844(7). Wehle v. Bradley, 195 So. 3d 928 (Ala. 2015).

[END OF SUPPLEMENT]

Footnotes

1 Ethridge v. TierOne Bank, 226 S.W.3d 127 (Mo. 2007); Berrington Corp. v. State Dept. of Revenue, 277 Neb. 765, 765 N.W.2d 448 (2009); Gore v. Myrtle/Mueller, 362 N.C. 27, 653 S.E.2d 400 (2007); First Intern. Bank & Trust v. Peterson, 2009 ND 207, 776 N.W.2d 543 (N.D. 2009); Strickland v. Strickland, 375 S.C. 76, 650 S.E.2d 465 (2007).
Cracker Barrel Old Country Store, Inc. v. Epperson, 284 S.W.3d 303 (Tenn. 2009).
As to knowledge of the facts, see § 44.
As to intention or motive to influence or mislead, see § 45.
As to conduct which amounts to a false representation, generally, see §§ 48 to 50.

2 Otero v. City of Albuquerque, 125 N.M. 770, 1998-NMCA-137, 965 P.2d 354 (Ct. App. 1998).

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§ 43. Power or capacity

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Estoppel 52.15 to 60, 64, 65

Actual lack of legal capacity cannot be supplied by estoppel,[1] nor can a person be estopped in pais when he or she cannot bind himself or herself by contract.[2] There can be no estoppel where there is an entire absence of power.[3]

Footnotes

1 State v. Hutchins, 79 N.H. 132, 105 A. 519, 2 A.L.R. 1685 (1919); Dupree v. Moore, 227 N.C. 626, 44 S.E.2d 37 (1947).

2 Ford v. Yost, 299 Ky. 682, 186 S.W.2d 896, 162 A.L.R. 149 (1944); Dupree v. Moore, 227 N.C. 626, 44 S.E.2d 37 (1947).

3 Stahl Soap Corp. v. City of New York, 9 A.D.2d 964, 195 N.Y.S.2d 812 (2d Dep't 1959).

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§ 44. Knowledge of facts and rights

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Estoppel 52.15, 54

For estoppel to apply, the party against whom the estoppel is asserted must have acted with full knowledge of the material facts and his or her rights,[1] or must have knowledge at the time the representations are made that the representations are untrue,[2] or at least he or she should have had the means at hand of knowing all the facts,[3] or must have been in such a position that he or she ought to have known them.[4] Thus, the defense of estoppel has been held not available to a law firm against a clients' breach-of-contract action for wrongly imposing a higher contingency fee for prosecuting an appeal where the clients at the time of acceptance of the settlement were aware that the opposing party's filing of a cash deposit in lieu of a cost bond formed the basis for the surcharge but did not know that such action did not constitute an appeal and thus were not fully aware of their rights.[5]

This rule applies with particular force where the estoppel is claimed by reason of silence or inaction,[6] or of mere loose expressions of an ambiguous character,[7] or where the case involves title to land or a dispute as to a boundary, and there was no negligence by the party in failing to assert his or her right.[8]

One of the necessary ingredients of estoppel is that the person sought to be estopped must have had actual or constructive notice.[9]

Ignorance of legal rights will not prevent one's conduct from working an estoppel if he or she has full knowledge of the facts.[10]

Footnotes

1 Lopez v. Muoz, Hockema & Reed, L.L.P., 980 S.W.2d 738 (Tex. App. San Antonio 1998), rev'd in part on other grounds, 22 S.W.3d 857 (Tex. 2000).
As to knowledge or ignorance of facts by party claiming estoppel, see §§ 78, 79.

2 Maness v. Santa Fe Park Enterprises, Inc., 298 Ill. App. 3d 1014, 233 Ill. Dec. 93, 700 N.E.2d 194 (1st Dist. 1998).

3 Star Leasing Corp. v. Elliott, 194 Kan. 206, 398 P.2d 566 (1965).

4 Star Leasing Corp. v. Elliott, 194 Kan. 206, 398 P.2d 566 (1965); Gould v. Transamerican Associates, 224 Md. 285, 167 A.2d 905 (1961).

5 Lopez v. Muoz, Hockema & Reed, L.L.P., 980 S.W.2d 738 (Tex. App. San Antonio 1998), rev'd in part on other grounds, 22 S.W.3d 857 (Tex. 2000).

6 Hutter v. Weiss, 132 Ind. App. 244, 177 N.E.2d 339 (1961); Star Leasing Corp. v. Elliott, 194 Kan. 206, 398 P.2d 566 (1965).
As to silence or inaction, generally, see §§ 57 to 61.

7 Bentley v. Cam, 362 Mich. 78, 106 N.W.2d 528 (1960); Morgan v. Reese, 99 Ohio App. 473, 59 Ohio Op. 272, 134 N.E.2d 581 (3d Dist. Putnam County 1954).

8 Hutter v. Weiss, 132 Ind. App. 244, 177 N.E.2d 339 (1961); Bentley v. Cam, 362 Mich. 78, 106 N.W.2d 528 (1960).

9 Stanley v. Greenfield, 207 Ga. 390, 61 S.E.2d 818, 21 A.L.R.2d 1256 (1950).

10 Reynolds v. Gorton, 30 Misc. 2d 216, 213 N.Y.S.2d 561 (Sup 1960).
As to an expression of legal opinion not constituting a basis for estoppel, generally, see § 50.

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§ 45. Intention or motive; intent to influence or mislead

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Estoppel 52.15, 53

Generally, one of the essential elements of equitable estoppel, as far as the party to be estopped is concerned, is that he or she should have intended, or at least have expected, that his or her conduct on which it is sought to predicate the estoppel will be acted upon by the other party or by other persons.[1] In other words, it is ordinarily essential that the party sought to be concluded by the estoppel must have intended that his or her words or conduct would be relied upon by others and influence their action, or at least, that they must be of such a character as would induce a reasonable and prudent person to believe that they were meant to be relied and acted upon.[2] Also, equitable estoppel may apply whether the actor intentionally or through culpable negligence induces another to believe that certain facts exist.[3]

However, estoppel does not require that the persons estopped intended the detriment flowing from their conduct.[4] It is not essential to the creation of an equitable estoppel that the party sought to be estopped must have had an actual intent to deceive, defraud, or mislead.[5] However, there is authority holding that to establish false representation or concealment as required for equitable estoppel, there must be evidence that the party acted with the intent to mislead the injured party.[6]

No estoppel can arise from an act or a representation if it was not intended to have the effect claimed.[7] If it is found and adjudged that the conduct complained of was not intended, nor reasonably calculated, to mislead to his or her detriment the party asserting the estoppel, such determination at trial level will not be reversed on appeal unless manifestly erroneous.[8]

Footnotes

1 Dalton Highway Dist. of Kootenai County v. Sowder, 88 Idaho 556, 401 P.2d 813 (1965); Cromwell v. Hosbrook, 81 S.D. 324, 134 N.W.2d 777 (1965).

2 Boesiger v. Freer, 85 Idaho 551, 381 P.2d 802 (1963).
As to necessity of reliance on words or conduct by party claiming estoppel, see § 74.

3 Birt v. Wells Fargo Home Mortg., Inc., 2003 WY 102, 75 P.3d 640 (Wyo. 2003).

4 Chevy Chase Bank, FSB v. Chaires, 350 Md. 716, 715 A.2d 199 (1998).

5 Piz v. Housing Authority of the City and County of Denver, 132 Colo. 457, 289 P.2d 905 (1955); Trustees of Internal Imp. Fund v. Claughton, 86 So. 2d 775 (Fla. 1956).

6 Boehme v. Fareway Stores, Inc., 762 N.W.2d 142 (Iowa 2009).

7 Ross v. C.I.R., 169 F.2d 483, 7 A.L.R.2d 719 (C.C.A. 1st Cir. 1948).

8 Travers v. Tilton, 134 So. 2d 807 (Fla. Dist. Ct. App. 2d Dist. 1961).

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§ 46. Fraud or bad faith

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Estoppel 52.15, 56, 59

It is established that the doctrine of estoppel rests upon the principles of fraud.[1] Equitable estoppel requires deliberate deception[2] and generally requires actual or constructive fraud; without such fraud, there can be no estoppel.[3] For purposes of equitable estoppel, it is immaterial whether the conduct falsely misrepresented the situation or fraudulently concealed the truth; equitable estoppel is designed to combat not just actual fraud but also constructive fraud, which consists of all acts, omissions, and concealments involving breaches of a legal or equitable duty resulting in damage to another and exists where such conduct, although not actually fraudulent, ought to be so treated when it has the same consequence and legal effects.[4]

While the basis of equitable estoppel is fraud, it is not essential in the technical sense to the application of estoppel.[5] The view has been expressed to the effect that neither actual fraud nor bad faith is generally considered an essential element,[6] but there must be either actual fraud involving an intent to deceive[7] or constructive fraud resulting from gross negligence.[8] Also, for the doctrine of equitable estoppel to apply, there need not be actual fraud, bad faith, or an intent to mislead or deceive.[9] Indeed, an estoppel may arise although there was no designed fraud on the part of the person sought to be estopped since to create an equitable estoppel, it is enough if the party has been induced to refrain from using such means or taking such action as lay in his or her power, by which he or she might have retrieved his or her position and might have been saved from the loss.[10]

Observation:

Equitable estoppel is not limited to circumstances of fraud; the doctrine of equitable estoppel may be applied to prevent an inequitable resort to a statute of limitations as well, and a defendant may, by its representations, promises, or conduct, be so estopped where the other elements of estoppel are present.[11]

One element of the defense of equitable estoppel requires the concealment of the material facts.[12]

Footnotes

1 Lansing Tp. v. City of Lansing, 356 Mich. 338, 97 N.W.2d 128 (1959).

2 Royal Mortg. Corp. v. F.D.I.C., 20 F. Supp. 2d 664 (S.D. N.Y. 1998), aff'd, 194 F.3d 389 (2d Cir. 1999); Pirkle v. Turner, 281 Ga. 846, 642 S.E.2d 849 (2007); Enserch Corp. v. Rebich, 925 S.W.2d 75 (Tex. App. Tyler 1996), writ dismissed by agreement, (July 8, 1996).

3 State ex rel. Shisler v. Ohio Pub. Emps. Retirement Sys., 122 Ohio St. 3d 148, 2009-Ohio-2522, 909 N.E.2d 610 (2009).

4 Birt v. Wells Fargo Home Mortg., Inc., 2003 WY 102, 75 P.3d 640 (Wyo. 2003).

5 Farrington v. Allsop, 670 N.E.2d 106 (Ind. Ct. App. 1996).

6 Devine v. Cordovado, 15 Alaska 232, 1954 WL 1354 (Terr. Alaska 1954); Industrial Indem. Co. v. Industrial Acc. Commission, 115 Cal. App. 2d 684, 252 P.2d 649 (2d Dist. 1953).

7 Swanson v. State, 83 Idaho 126, 358 P.2d 387 (1960); Lansing Tp. v. City of Lansing, 356 Mich. 338, 97 N.W.2d 128 (1959).

8 Pirkle v. Turner, 281 Ga. 846, 642 S.E.2d 849 (2007); Swanson v. State, 83 Idaho 126, 358 P.2d 387 (1960).

9 Gore v. Myrtle/Mueller, 362 N.C. 27, 653 S.E.2d 400 (2007).

10 Vu v. Prudential Property & Casualty Ins. Co., 26 Cal. 4th 1142, 113 Cal. Rptr. 2d 70, 33 P.3d 487 (2001).

11 Rauscher v. City of Lincoln, 269 Neb. 267, 691 N.W.2d 844 (2005).

12 Spencer v. Estate of Spencer, 2008 SD 129, 759 N.W.2d 539 (S.D. 2008).

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a. In General

§ 47. Mistake

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Estoppel 52.15

Where the conduct or representation of the party sought to be estopped is due to ignorance founded upon an innocent mistake, no estoppel will arise.[1] Also, estoppel is not imposed merely where a party is given incorrect information or where a mistake occurs.[2]

Footnotes

1 Coleman v. Southern Pac. Co., 141 Cal. App. 2d 121, 296 P.2d 386 (1st Dist. 1956).

2 Strong v. State ex rel. The Oklahoma Police Pension and Retirement Bd., 2005 OK 45, 115 P.3d 889 (Okla. 2005).

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b. Representations or Positive Acts or Conduct

§ 48. Generally

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Estoppel 81 to 84, 88(3), 89.1, 90

Equitable estoppel requires a misrepresentation that may arise through a combination of misleading statements[1] or the misrepresentation of a material fact.[2] Equitable estoppel holds a person to a representation made, or a position assumed, where otherwise inequitable consequences would result to another, who has in good faith, relied upon that representation or position.[3] Indeed, the application of the doctrine of equitable estoppel generally requires an express representation[4] made by the party estopped and relied upon by another party who changes his or her position to his or her detriment.[5] Such a representation may be manifested by affirmative conduct[6] amounting to a false representation or concealment of material fact,[7] either acts or words, or by silence amounting to a concealment of material facts that are known to the party estopped and unknown to the other party.[8] If one who by his or her acts or representations intentionally induces another to believe certain facts to exist, and the latter, not knowing the facts, acts on such belief to his or her substantial prejudice, the former is, in equity, estopped from denying the existence of such fact.[9] In determining whether to apply the doctrine of equitable estoppel, a court may consider whether there was a course of conduct that, in its cumulative impact, was tantamount to a representation made by one party with the expectation that other persons would rely on such conduct.[10]

Where a party asserts estoppel, the representation, whether by word or act, to justify a prudent person in acting upon it, must be plain, not doubtful or a matter of questionable inference.[11] In order that a statement or representation may be relied upon as creating an estoppel, it must be clear and reasonably certain in its intendment,[12] and no estoppel can arise from an act or a

representation if from its nature or from the time when, or the circumstances under which, it was done or made, it would be unreasonable to attribute such effect to it.[13]

As a general rule, a person will not be permitted to take advantage of, or to question the validity or propriety of, any act of another that has been committed upon his or her own request or was caused by his or her own conduct.[14]

Estoppel to question or object to a thing done or a position taken by another may arise from consent or clearly implied consent thereto.[15]

Under appropriate circumstances, an equitable estoppel may be created by a receipt.[16]

Footnotes

1 Blue Star Corp. v. Ckf Properties, LLC, 2009 ME 101, 980 A.2d 1270 (Me. 2009).

2 Sawyer v. Mills, 295 S.W.3d 79 (Ky. 2009), as modified, (Nov. 2, 2009); In re Thornton, 2009 MT 367, 353 Mont. 252, 220 P.3d 395 (2009).

3 Merritt v. Merritt, 2003 OK 68, 73 P.3d 878 (Okla. 2003); City of Seattle v. St. John, 166 Wash. 2d 941, 215 P.3d 194 (2009).

4 Facer v. Toledo, 94 Ohio Misc. 2d 1, 702 N.E.2d 1267 (C.P. 1998).

5 Investors Title Co. v. Chicago Title Ins. Co., 983 S.W.2d 533 (Mo. Ct. App. E.D. 1998).

6 Hedged Inv. Partners, L.P. v. Norwest Bank Minnesota, N.A., 578 N.W.2d 765, 35 U.C.C. Rep. Serv. 2d 608 (Minn. Ct. App. 1998); Investors Title Co. v. Chicago Title Ins. Co., 983 S.W.2d 533 (Mo. Ct. App. E.D. 1998).

7 In re Okan's Foods, Inc., 217 B.R. 739 (Bankr. E.D. Pa. 1998); Sagewillow, Inc. v. Idaho Dept. of Water Resources, 138 Idaho 831, 70 P.3d 669 (2003).

8 Investors Title Co. v. Chicago Title Ins. Co., 983 S.W.2d 533 (Mo. Ct. App. E.D. 1998).

9 Whitacre Partnership v. Biosignia, Inc., 358 N.C. 1, 591 S.E.2d 870 (2004); Knori v. State, ex rel., Dept. of Health, Office of Medicaid, 2005 WY 48, 109 P.3d 905 (Wyo. 2005).

10 Lesniewski v. W.B. Furze Corp., 308 N.J. Super. 270, 705 A.2d 1243 (App. Div. 1998).

11 Steinhart v. County of Los Angeles, 47 Cal. 4th 1298, 104 Cal. Rptr. 3d 195, 223 P.3d 57 (2010).

12 Nesbitt v. Erie Coach Co., 416 Pa. 89, 204 A.2d 473 (1964).

13 Ross v. C.I.R., 169 F.2d 483, 7 A.L.R.2d 719 (C.C.A. 1st Cir. 1948); Milner v. New Edinburg School Dist., 211 Ark. 337, 200 S.W.2d 319 (1947).

14 Bradford v. Western Oldsmobile, Inc., 222 Or. 440, 353 P.2d 232 (1960); Caldwell v. Anschutz Drilling Co., 13 Utah 2d 177, 369 P.2d 964 (1962).

15 Webb v. Gaskins, 255 N.C. 281, 121 S.E.2d 564 (1961).

16 Grantham v. State Farm Mut. Auto. Ins. Co., 126 Cal. App. 2d Supp. 855, 272 P.2d 959, 48 A.L.R.2d 1088 (App. Dep't Super. Ct. 1954).

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§ 49. Necessity of relation to present or past fact; representations as to future

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West's Key Number Digest

West's Key Number Digest, Estoppel 82 to 85

As a general rule, and apart from circumstances calling for the application of the doctrine of promissory estoppel, a representation or assurance, in order to furnish the basis of an estoppel, must relate to some present or past fact or state of things as distinguished from mere promises or statements as to the future.[1] The misrepresentation must be one of fact and not of an intention to support equitable estoppel.[2] A truthful statement as to the present intention of a party with regard to his or her future act cannot be the foundation upon which an estoppel may be built.[3] The reason on which the doctrine of estoppel rests wholly fails when the representation relates only to a present intention or purpose of a party because, its nature being uncertain and liable to change, it cannot properly form a basis or inducement upon which a party can reasonably adopt any fixed and permanent course of action.[4] Thus, an alleged promise of an automobile credit corporation to provide a better financing package for the startup of a new automobile dealership pertains to a contemplated future action and is not a false representation of past or present facts as required for the applicability of the doctrine of equitable estoppel.[5]

A person cannot be bound, by any rule of morality or good faith, not to change his or her intention, nor can he or she be precluded from showing such change merely because he or she has previously represented that his or her intentions were once different from those that he or she eventually executed.[6]

Footnotes

1 Berverdor, Inc. v. Salyer Farms, 97 Cal. App. 2d 459, 218 P.2d 138 (4th Dist. 1950); Nickel v. School Bd. of Axtell, 157 Neb. 813, 61 N.W.2d 566 (1953).
As to promissory estoppel, generally, see §§ 51 to 56.

2 Meier v. Rieger, 152 Or. App. 312, 954 P.2d 786 (1998) (abrogated on other grounds by, Hoffman v. Freeman Land and Timber, LLC., 329 Or. 554, 994 P.2d 106 (1999)).

3 South Inv. Corp. v. Norton, 57 So. 2d 1 (Fla. 1952).

4 Fiers v. Jacobson, 123 Mont. 242, 211 P.2d 968 (1949).

5 Chrysler Credit Corp. v. Bert Cote's L/A Auto Sales, Inc., 1998 ME 53, 707 A.2d 1311 (Me. 1998).

6 Fiers v. Jacobson, 123 Mont. 242, 211 P.2d 968 (1949).

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28 Am. Jur. 2d Estoppel and Waiver § 50

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Part One. Estoppel

III. Equitable Estoppel or Estoppel in Pais

B. Elements, Requisites, and Grounds

2. As Related to Party to Be Estopped

b. Representations or Positive Acts or Conduct

§ 50. Necessity of relation to present or past fact; representations as to future—Estimate or opinion

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Estoppel 82 to 85

A statement that is honestly made and that is intended or understood to be a mere estimate will not support an estoppel[1] nor is a mere expression of opinion enough to raise an estoppel.[2]

A representation as to what property will be worth at a future date is a mere statement of opinion that does not constitute a basis for a claim of estoppel.[3]

Equitable estoppel generally does not apply to representations of law[4] or opinions on a matter of law,[5] at least in the absence of actual or professed special knowledge or confidential relationship.[6] Thus, in a client's malpractice action against its former law firm, the firm has been held not estopped from claiming that the client's damages in the underlying suit would have been less than the firm's estimate at the time of the underlying suit where the firm's estimate was a tentative, "best case" estimate, and the memorandum containing the estimate expressed numerous qualifications.[7]

A misrepresentation as to the law will not give rise to an action for fraud and deceit and therefore, for purposes of an equitable estoppel claim, cannot be said to constitute conduct amounting to a false representation or concealment of material facts or at least that is calculated to convey the impression that those facts are otherwise than and inconsistent with those that the party subsequently attempts to assert.[8]

Footnotes

1 Talbott v. City of Lyons, 171 Neb. 186, 105 N.W.2d 918 (1960); Nickel v. School Bd. of Axtell, 157 Neb. 813, 61 N.W.2d 566 (1953).

2 Talbott v. City of Lyons, 171 Neb. 186, 105 N.W.2d 918 (1960); Nickel v. School Bd. of Axtell, 157 Neb. 813, 61 N.W.2d 566 (1953).

3 Everts v. Matteson, 21 Cal. 2d 437, 132 P.2d 476 (1942).

4 Overhulse Neighborhood Ass'n v. Thurston County, 94 Wash. App. 593, 972 P.2d 470 (Div. 2 1999).

5 Gilbert v. City of Martinez, 152 Cal. App. 2d 374, 313 P.2d 139 (1st Dist. 1957); Alexander v. Randall, 257 Iowa 422, 133 N.W.2d 124 (1965).

6 Gilbert v. City of Martinez, 152 Cal. App. 2d 374, 313 P.2d 139 (1st Dist. 1957).

7 Power Constructors, Inc. v. Taylor & Hintze, 960 P.2d 20 (Alaska 1998).

8 Agrex, Inc. v. City of Superior, 7 Neb. App. 237, 581 N.W.2d 428 (1998).

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28 Am. Jur. 2d Estoppel and Waiver § 51

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2. As Related to Party to Be Estopped

c. Promissory Estoppel

§ 51. Generally; elements

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Estoppel 85

A.L.R. Library

Promissory estoppel of lending institution based on promise to lend money, 18 A.L.R.5th 307
Comment Note.—Promissory estoppel, 48 A.L.R.2d 1069
Rights and liabilities as between employer and employee with respect to general pension or retirement plan, 42 A.L.R.2d 461

Trial Strategy

Detrimental Reliance on Promise, 4 Am. Jur. Proof of Facts 2d 641

Under the doctrine of promissory estoppel, a promise that the promisor reasonably expects to induce action or forbearance on the part of the promisee or third person and that does induce action or forbearance is binding if injustice can be avoided only by

the enforcement of the promise.[1] A promise that induces action will bind the promisor only if the action induced amounts to a substantial change of position; it was either actually foreseen or reasonably foreseeable by the promisor; an actual promise was made and itself induced the action or forbearance in reliance thereon; and enforcement is necessary in the interest of justice.[2]

A promissory estoppel is not subject to the requirement of a false representation or concealment of material facts, or of the promisee's absence of knowledge of the true facts, since the reliance is on the promise rather than a misrepresentation of fact.[3]

A statement of future intent is not an unequivocal promise necessary to invoke the doctrine of promissory estoppel.[4] Similarly, a cause of action for promissory estoppel does not lie where an alleged oral promise was conditional so that reliance upon it was not reasonable.[5] Promissory estoppel does not transform a conditional promise into an unconditional promise.[6]

Recovery under a promissory estoppel theory is not possible where a plaintiff has simply chosen to believe the more appealing of two conflicting statements.[7]

Mere inaction cannot give rise to a promissory estoppel.[8]

Whether the enforcement of a promise is necessary to avoid injustice, as required for a promissory estoppel claim, may depend on the reasonableness of the promisee's reliance; on its definite and substantial character in relation to the remedy sought; on the formality with which the promise is made; on the extent to which the evidentiary, cautionary, deterrent, and channeling functions of form are met by the commercial setting or otherwise; and on the extent to which such other policies as the enforcement of bargains and the prevention of unjust enrichment are relevant.[9]

A trial court retains broad discretion under promissory estoppel to fashion whatever remedies or damages justice requires;[10] however, that discretion must also be limited as justice requires.[11] Promissory estoppel does not attempt to provide the plaintiff damages based upon the benefit of the bargain.[12] Moreover, in applying promissory estoppel, the courts may appropriately limit relief only to those damages suffered as a result of justifiably relying on the other party's promise.[13]

Practice Tip:

Promissory estoppel does not require that the injured party exhaust all other possible means of obtaining the benefit of the promise from any and all sources before being able to enforce the promise against the defendant.[14]

Promissory estoppel does not create liability where none otherwise exists but prevents a party from insisting upon his or her strict legal rights when it would be unjust to allow him or her to enforce them.[15]

CUMULATIVE SUPPLEMENT

Cases:

Under Mississippi law, the elements of promissory estoppel are: (1) the making of a promise, even though without consideration, (2) the intention that the promise be relied upon and in fact is relied upon, and (3) a refusal to enforce it would virtually sanction the perpetuation of fraud or would result in other injustice. Hopson v. Chase Home Finance LLC, 14 F. Supp. 3d 774 (S.D. Miss. 2014).

In New Hampshire, the promissory estoppel doctrine does not simply allow the enforcement of promises as justice requires; there are other limitations on its reach, such as protecting only reasonable reliance on the part of the promisee to her detriment. Ruivo v. Wells Fargo Bank, N.A., 766 F.3d 87 (1st Cir. 2014).

Memorandum of understanding and successor letter of intent that were expressly nonbinding and envisaged negotiation of final agreements defining mutual obligations of coal mining company and extractor of coal bed methane (CBM) gas, as to proposed strategic alliance to swap mining company's CBM gas extraction leases in exchange for extractor's options to buy coal mining rights, were not enforceable under Illinois' doctrine of promissory estoppel, since extractor recklessly, rather than reasonably, relied on expressly nonbinding agreements by transferring extensive coal options to mining company in anticipation of reciprocal favors. BPI Energy Holdings, Inc. v. IEC (Montgomery), LLC, 664 F.3d 131 (7th Cir. 2011).

Under Illinois' doctrine of promissory estoppel, allowing enforcement of an otherwise unenforceable promise, if the promisee reasonably relied upon the promise to his detriment, "reasonable" in this context has the same meaning as due care, so unreasonable reliance would be equivalent to contributory negligence; but fraud is an intentional tort, and contributory negligence is not a defense to an intentional tort and therefore is not a defense to a claim to promissory estoppel that is based upon a fraudulent promise. BPI Energy Holdings, Inc. v. IEC (Montgomery), LLC, 664 F.3d 131 (7th Cir. 2011).

Loan servicer did not make a clear and unambiguous promise to offer deed of trust grantor a Home Affordable Modification Program (HAMP) loan modification, as required to give rise to promissory estoppel claim under California law. Deschaine v. IndyMac Mortg. Services, 617 Fed. Appx. 690 (9th Cir. 2015).

Under Georgia law, hospital could not have reasonably relied on healthcare facility operator's promise to purchase its assets, as required to prevail on its promissory estoppel claim; although operator joined hospital in seeking state attorney general's approval of transaction, parties letter of intent reflected their desire not to be bound until a definitive and binding asset sale agreement was finalized and executed. West's Ga.Code Ann. § 13–3–44(a). St. Joseph Hosp., Augusta, Georgia, Inc. v. Health Management Associates, Inc., 705 F.3d 1289 (11th Cir. 2013).

Under Illinois law, promissory estoppel can be used as the basis of a cause of action for damages. Dugas-Filippi v. JP Morgan Chase & Co., 971 F. Supp. 2d 802 (N.D. Ill. 2013).

Under Indiana law, prospective employee alleged that prospective supervisor sent several e-mails and correspondences encouraging her to quit her current job and welcoming her as new employee, that she was given start date for her new job, that prospective employer made definite offer of employment, notwithstanding contingency of completing successful background check, and that she quit her job in reliance of offer, as required to state claim of promissory estoppel against prospective employer based on promise of job offer on which she could have relied prior to retraction of job offer by prospective employer based on falsehoods in job application. Brueck v. John Maneely Co., Inc., 131 F. Supp. 3d 774 (N.D. Ind. 2015).

Although it is recognized that no special form of words is necessary to create promise, for purposes of promissory estoppel claim under Indiana law, mere expression of an intention is not promise; nor does prediction, opinion, or prophecy constitute promise. Tyler v. Trustees of Purdue University, 834 F. Supp. 2d 830 (N.D. Ind. 2011).

To be successful on a promissory estoppel claim under Kansas law, a plaintiff must establish evidence showing: (1) the promisor reasonably intended or expected the promisee to act in reliance on the promise; (2) the promisee acted reasonably in reliance

on that promise; and (3) a refusal of the court to enforce the promise would sanction the perpetration of fraud or result in other injustice. W & W Steel, LLC v. BSC Steel, Inc., 944 F. Supp. 2d 1066 (D. Kan. 2013).

Actions allegedly taken in reliance upon prior real property owner's oral promise to purchase buildings that were located on the property if owner elected to terminate building owners' lease were not to building owners' detriment, and thus, building owners could not recover damages from prior property owner under doctrine of promissory estoppel for breach of prior owner's promise; owners' installation of pump in existing well, building of well house, removal of junk from the property, and restoration of garden plot were taken to make the property more livable during the 19 years that they leased the property before the lease expired. Nicholson v. Coeur D'Alene Placer Mining Corp., 161 Idaho 877, 392 P.3d 1218 (2017).

The elements required to support a claim for promissory estoppel are: (1) one party's reliance on a promise creates a substantial economic detriment, (2) the reliance was or should have been foreseeable, and (3) the reliance was reasonable and justified. Profits Plus Capital Management, LLC v. Podesta, 332 P.3d 785 (Idaho 2014).

Conduct can serve as the basis for contract implied in law or fact, but conduct cannot form an oral contract, and it cannot bind a counter-party in promissory estoppel where there has been no definite promise to perform the alleged conduct. Dolan v. McQuaide, 215 Md. App. 24, 79 A.3d 394 (2013).

"Promissory estoppel" is based on a party's detrimental reliance on another party's promise that would otherwise be an unenforceable contract. Synergy4 Enterprises, Inc. v. Pinnacle Bank, 290 Neb. 241, 859 N.W.2d 552 (2015).

Under theory of "third-party promissory estoppel," a third party to an unfulfilled promise may sue for damages suffered by reasonable reliance thereupon. MatlinPatterson ATA Holdings LLC v. Federal Express Corp., 87 A.D.3d 836, 929 N.Y.S.2d 571 (1st Dep't 2011).

To establish a cause of action for promissory estoppel, the conduct relied upon to establish estoppel must not be otherwise compatible with the agreement between the parties as written. JP Morgan Chase Bank, Nat. Ass'n v. Ilardo, 940 N.Y.S.2d 829 (Sup 2012).

Materials and services subcontractor's allegations that he told owner of commercial construction project that general contractor had not paid subcontractor for materials and work done and was owed $33,600, that owner responded by orally promising subcontractor that he would be paid, that subcontractor continued working on project based on owner's promise, that he relied on promise instead of filing mechanics' lien on property, and that he received $7,000 but was never paid balance owed, stated cause of action for damages on theory of promissory estoppel. Filo v. Liberato, 2013-Ohio-1014, 987 N.E.2d 707 (Ohio Ct. App. 7th Dist. Mahoning County 2013).

Energy procurement corporation and its founder were liable to motor controls seller under doctrine of promissory estoppel, despite contention that there was no injustice based on seller's failure to perform as represented when they were attempting to form joint venture; founder promised seller revenue sharing arrangement, seller relied on promise to introduce founder to its sales partners, who made several sales calls, and once purchasing volume target was met and venture was about to realize revenues, founder refused to pay seller and formed exclusive relationship with two of seller's most productive partners. Gutteridge v. J3 Energy Group, Inc., 2017 PA Super 150, 165 A.3d 908 (2017).

Promissory estoppel is also referred as "detrimental reliance" because the plaintiff must show not only that a promise was made, but also that the plaintiff reasonably relied on the promise to his detriment. Cadence Bank, N.A. v. The Alpha Trust, 473 S.W.3d 756 (Tenn. Ct. App. 2015), appeal denied, (June 11, 2015).

To support a claim for promissory estoppel, the promise must be more than a mere expression of intention, hope, desire, or opinion, which shows no real commitment. Restatement (Second) of Contracts § 90(1). Nelson v. Town of Johnsbury Selectboard, 2015 VT 5, 115 A.3d 423 (Vt. 2015).

[END OF SUPPLEMENT]

Footnotes

1 Lange v. TIG Ins. Co., 68 Cal. App. 4th 1179, 81 Cal. Rptr. 2d 39 (2d Dist. 1998); W.R. Townsend Contracting, Inc. v. Jensen Civil Const., Inc., 728 So. 2d 297 (Fla. Dist. Ct. App. 1st Dist. 1999); AgriCommodities, Inc. v. J.D. Heiskell & Co., Inc., 297 Ga. App. 210, 676 S.E.2d 847 (2009); Gonsalves v. Nissan Motor Corp. in Hawaii, Ltd., 100 Haw. 149, 58 P.3d 1196 (2002); Decatur County Feed Yard, Inc. v. Fahey, 266 Kan. 999, 974 P.2d 569 (1999); Cass County Bank v. Dana Partnership, 275 Neb. 933, 750 N.W.2d 701 (2008); Pappas v. Ippolito, 177 Ohio App. 3d 625, 2008-Ohio-3976, 895 N.E.2d 610 (8th Dist. Cuyahoga County 2008); In re Weekley Homes, L.P., 180 S.W.3d 127 (Tex. 2005).

2 Valdez Fisheries Development Ass'n, Inc. v. Alyeska Pipeline Service Co., 45 P.3d 657 (Alaska 2002).

3 Miller v. Lawlor, 245 Iowa 1144, 66 N.W.2d 267, 48 A.L.R.2d 1058 (1954).

4 Wright v. Miller, 93 Wash. App. 189, 963 P.2d 934 (Div. 1 1998).

5 G & F Associates Co. v. Brookhaven Beach Health Related Facility, 249 A.D.2d 441, 671 N.Y.S.2d 510 (2d Dep't 1998).

6 Kamat v. Allatoona Federal Sav. Bank, 231 Ga. App. 259, 498 S.E.2d 152 (1998).

7 McMahon v. Digital Equipment Corp., 162 F.3d 28 (1st Cir. 1998).

8 Wolters Village Management Co. v. Merchants and Planters Nat. Bank of Sherman, 223 F.2d 793 (5th Cir. 1955).

9 Leonardi v. City of Hollywood, 715 So. 2d 1007 (Fla. Dist. Ct. App. 4th Dist. 1998).

10 Goff-Hamel v. Obstetricians & Gynecologists, P.C., 256 Neb. 19, 588 N.W.2d 798 (1999).

11 Barnhart v. New York Life Ins. Co., 141 F.3d 1310 (9th Cir. 1998).

12 Goff-Hamel v. Obstetricians & Gynecologists, P.C., 256 Neb. 19, 588 N.W.2d 798 (1999).

13 Newton Tractor Sales, Inc. v. Kubota Tractor Corp., 233 Ill. 2d 46, 329 Ill. Dec. 322, 906 N.E.2d 520 (2009).

14 Mooney v. Mooney, 235 Ga. App. 117, 508 S.E.2d 766 (1998).

15 In re Weekley Homes, L.P., 180 S.W.3d 127 (Tex. 2005); Allied Vista, Inc. v. Holt, 987 S.W.2d 138 (Tex. App. Houston 14th Dist. 1999).

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c. Promissory Estoppel

§ 52. Requirement that promise must be clear, definite, and sufficiently specific

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Estoppel 85

A promissory estoppel cause of action demands a promise involving commitment or the manifestation of an intention to act or refrain from acting in a specified way.[1] The promise must be clear and unambiguous[2] and sufficiently specific so that the judiciary can understand the obligation assumed and enforce the promise according to its terms.[3] Simply stated, to recover under a theory of promissory estoppel, a plaintiff must demonstrate reliance upon a clear and definite promise by the defendant.[4] However, promissory estoppel does not impose the requirement that the promise giving rise to the cause of action must be so comprehensive in scope as to meet the requirements of an offer that would ripen into a contract if accepted by the promisee.[5]

CUMULATIVE SUPPLEMENT

Cases:

No clear and definite promise of future employment was made by either staffing agency or its client with which freelancer interviewed, and thus, neither staffing company nor its client were liable on freelancer's promissory estoppel claims arising out of his actions in quitting his permanent job on belief that he had been promised a position with staffing agency's client; while staffing agency's representative allegedly told freelancer that he never had anyone hired so quickly, he also informed freelancer that any employment opportunity was subject to financial approval and that he should wait for such approval before

resigning from his permanent position, and there was no evidence that anyone representing either staffing agency or its client ever conveyed such approval to freelancer. Kenny v. Onward Search, 713 Fed. Appx. 112 (3d Cir. 2017).

Document that trucking company sent to shipping broker expressing its interest in purchasing broker, but stating that agreement was only indication of interest and was not intended to be legally binding and explaining that company would enter into binding contract to purchase broker only after fulfillment of certain conditions, did not prevent promissory estoppel under Texas law from applying to company's continuous, numerous, and specific reassurances that it would purchase broker, since document's discussion of contractual prerequisites did not directly contradict oral promise that company would purchase broker. Universal Truckload, Incorporated v. Dalton Logistics, Incorporated, 946 F.3d 689 (5th Cir. 2020).

Alleged oral promise of famous guitarist's family company's employee to bandmates of guitarist at an auction would constitute a clear and unambiguous promise if made, as required for a promissory estoppel claim under New York law; company allegedly promised that if bandmates sold two guitars that guitarist had left to them when he died for $30,000 dollars to company that company would return the guitars to bandmates if the men indicated in the future that they wished to regain possession of the guitars and proffered the same $30,000 that company purchased the guitars from them for. Aleem v. Experience Hendrix, L.L.C., 413 F. Supp. 3d 251 (S.D. N.Y. 2019).

Former user, whose former boyfriend impersonated him on web-based dating application, failed to allege sufficiently unambiguous promise by operators of application and, thus, did not state claim for promissory estoppel, although user contended that community values page and terms of service constituted promise to monitor and remove content; operators' statements did not constitute clear and unambiguous promise to search for and remove offensive content, community values page represented that operators had tools to protect users from dangerous actions and behaviors, it did not represent or imply that operators would take "hard line" against users who post illicit content, and terms of service reserved operators' right to remove illicit content but did not represent that operators would do so. Herrick v. Grindr, LLC, 306 F. Supp. 3d 579 (S.D. N.Y. 2018).

Male private university student failed to show that university officials made an unambiguous, enforceable promise that violations of other university policies that came to light while investigating student's alleged violation of university's sexual misconduct policy would not be punished, as required to support his promissory estoppel claim under Tennessee law, arising out of discipline imposed upon student for collateral policy violations after investigation cleared him of sexual misconduct; university's sexual misconduct policy explicitly permitted punishment of collateral violations discovered during investigation, student found process university used consistent with its policy, and there was no indication any university official said student would be exempted from that policy. Doe v. Belmont University, 367 F. Supp. 3d 732 (M.D. Tenn. 2019).

Under Wisconsin law, contractor's alleged reliance on subcontractor's bid to build curtainwall for office building development project was commercially unreasonable, and thus subcontractor was not liable on promissory estoppel theory; parties manifestly intended not to be bound by anything other than an integrated superseding subcontract, price of subcontract changed three times after submission of initial bid, and both parties were aware of contingencies that could have prevented the signing of the subcontract, including permission to enter into the subcontract from the project owner. CG Schmidt Inc. v. Permasteelisa North America, 142 F. Supp. 3d 755, 87 U.C.C. Rep. Serv. 2d 1184 (E.D. Wis. 2015), aff'd, 2016 WL 3349209 (7th Cir. 2016).

Brother's statement acknowledging that sister was entitled to 50% of proceeds of sale of house, which brother inherited from mother, at time of sale minus all expenses brother incurred for property did not contain a clear and ambiguous promise on which to base a claim of promissory estoppel by sister's children who sought to force sale of house and to split proceeds with brother after sister's death, where, prior to her death, sister altered statement by writing in words after your death before giving statement back to brother as unacceptable as to expenses, after which statement apparently was not discussed again, statement did not make clear who your was meant to identify, and it was not clear whether brother agreed to the change since he had already signed original statement. Sousa v. Roy, 243 A.3d 775 (R.I. 2021).

[END OF SUPPLEMENT]

Footnotes

1 Michelson v. Digital Financial Services, 167 F.3d 715 (1st Cir. 1999).

2 Santiago v. Owens-Illinois, Inc., 477 F. Supp. 2d 493 (D. Conn. 2007) (applying Connecticut law); Ashland Inc. v. Morgan Stanley & Co., Inc., 700 F. Supp. 2d 453 (S.D. N.Y. 2010); Lange v. TIG Ins. Co., 68 Cal. App. 4th 1179, 81 Cal. Rptr. 2d 39 (2d Dist. 1998); Dailey v. Craigmyle & Son Farms, L.L.C., 177 Ohio App. 3d 439, 2008-Ohio-4034, 894 N.E.2d 1301 (4th Dist. Adams County 2008).

3 Wyatt v. BellSouth, Inc., 176 F.R.D. 627 (M.D. Ala. 1998).

4 ABT Associates, Inc. v. JHPIEGO Corp., 9 Fed. Appx. 172 (4th Cir. 2001); Toll Bros., Inc. v. Board of Chosen Freeholders of County of Burlington, 194 N.J. 223, 944 A.2d 1 (2008).
Under Delaware law, a soybean processing company's alleged agreement to construct a biodiesel plant with a financial services corporation was not reasonably definite and certain as required for the corporation's promissory estoppel claim where the corporation had built such plants previously and would have known many more agreements would be necessary before either party could responsibly make a binding commitment to go forward with the venture. Transocean Group Holdings Pty Ltd. v. South Dakota Soybean Processors, LLC, 663 F. Supp. 2d 731 (D. Minn. 2009).

5 Goff-Hamel v. Obstetricians & Gynecologists, P.C., 256 Neb. 19, 588 N.W.2d 798 (1999).

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2. As Related to Party to Be Estopped

c. Promissory Estoppel

§ 53. Abandonment of existing rights

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Estoppel 85

The doctrine of promissory estoppel is most frequently applied to defeat recovery by someone asserting prima facie legal rights. This is borne out by the fact that the doctrine is most widely recognized and most frequently applied in cases of promises or representations as to an intended abandonment of existing rights.[1] Some courts have even stated that these are the only cases in which promises as to the future may be the basis of an estoppel.[2] However, the better-considered statements of the doctrine do not contain this limitation, and the courts have actually applied the doctrine in numerous instances that could not fairly be said to involve an abandonment of an existing right.[3]

Thus, evidence that a bank taking a mortgage on property to be built undertook to make arrangements for fire insurance at the mortgagor's expense, and that the mortgagor relied thereon and the bank failed to procure insurance for the property, which burned, showed all the elements necessary for application of the doctrine.[4] Similarly, where the defendant manufacturer led the plaintiff to believe that if he acquired the outstanding stock of the dealership corporation, the franchise would be continued, and the plaintiff acted in reliance on this promise in acquiring the stock, a promissory estoppel arose.[5]

The application of the doctrine to commercial transactions is expressly favored.[6]

Footnotes

1 Peoples Nat. Bank of Little Rock v. Linebarger Const. Co., 219 Ark. 11, 240 S.W.2d 12 (1951); South Inv. Corp. v. Norton, 57 So. 2d 1 (Fla. 1952).

2 Southeastern Sales & Service Co. v. T. T. Watson, Inc., 172 So. 2d 239 (Fla. Dist. Ct. App. 2d Dist. 1965).

3 Peoples Nat. Bank of Little Rock v. Linebarger Const. Co., 219 Ark. 11, 240 S.W.2d 12 (1951).

4 Graddon v. Knight, 138 Cal. App. 2d 577, 292 P.2d 632 (1st Dist. 1956).

5 Chrysler Corp. v. Quimby, 51 Del. 264, 144 A.2d 123 (1958), opinion adhered to on reh'g, 51 Del. 264, 144 A.2d 885 (1958).

6 Schafer v. Fraser, 206 Or. 446, 290 P.2d 190 (1955).

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§ 54. Effect of or on contract

Topic Summary | Correlation Table | References

West's Key Number Digest

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A.L.R. Library

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Parker, Mending Broken Promises: Allowing Homeowners to Pursue Claims of Promissory Estoppel Against Lenders When Denied Loan Modifications, 47 New Eng. L. Rev. 985 (2013)
Sarapinian, Fighting Foreclosure: Using Contract Law to Enforce the Home Affordable Modification Program, 64 Hastings L.J. 905 (2013)

The original point of promissory estoppel was to enable courts to enforce contract-like promises made unenforceable by technical defects or defenses.[1] Claims for breach of contract and promissory estoppel are alternatives for each other; the doctrine of promissory estoppel comes into play where the requisites of a contract are not met, yet the promise should be enforced to avoid injustice.[2] A party is generally permitted to plead both promissory estoppel and breach-of-contract claims in the alternative.[3]

The doctrine of promissory estoppel is typically invoked when the formal requirements of contract formation are absent, and enforcing the promise would serve the interests of justice.[4] Indeed, promissory estoppel is an offensive theory of recovery, or cause of action, providing a remedy for those who rely to their detriment, under certain circumstances, on promises, despite the absence of any mutual agreement by the parties on all the essential terms of a contract.[5] The doctrine of promissory estoppel is also used to enforce a promise where there is a lack of consideration.[6] Promissory estoppel implies a contract in law where no contract exists in fact,[7] or, as stated in some jurisdictions, a promissory estoppel claim is a contract claim.[8] In other words, promissory estoppel permits recovery where no contract in fact exists.

A promissory estoppel claim is precluded by the existence of an enforceable contract,[9] and in fact, promissory estoppel does not apply when the dispute arises out of a valid contract between the parties.[10]

Once it is established, either by an admission of a party or by a judicial finding, that there is in fact an enforceable contract between the parties, and therefore, a consideration exists, then a party may no longer recover under the theory of promissory estoppel.[11] Similarly, the remedy of promissory estoppel is not available when an unambiguous contract exists that covers the issue for which damages are sought.[12] When a contract exists containing express language contrary to an alleged, prior promise, a party cannot make out the elements of a clear and unambiguous promise or reasonable reliance necessary to prove a promissory estoppel claim as the specific disclaimer destroys the allegations in a plaintiff's complaint that an agreement was executed in reliance upon contrary oral representations.[13] Also, where a written statement conflicts with an oral statement, promissory estoppel law assumes that a reasonable person will investigate further.[14]

CUMULATIVE SUPPLEMENT

Cases:

Under New York law, manager of investment funds could not reasonably rely on investor's alleged promises made in subscription agreement and, thus, promissory estoppel did not bar investor from seeking return of funds from manager of investment funds; manager of investment funds was not a party to the agreement. ED Capital, LLC v. Bloomfield Investment Resources Corp., 757 Fed. Appx. 26 (2d Cir. 2018).

Under Michigan law, manufacturer-supplier could not have reasonably relied upon purported promise by buyer of throttle position sensors to pay for all of manufacturer-supplier's pre-production engineering, development, and testing costs, which was at odds with terms of parties' integrated express contract, and therefore enforcement of promise, under promissory estoppel

theory, was not necessary to avoid injustice. KSR Intern. Co. v. Delphi Automotive System, LLC, 523 Fed. Appx. 357 (6th Cir. 2013).

Promissory estoppel is inapplicable under Wisconsin law when there is a written contract. Olson v. Bemis Co., Inc., 800 F.3d 296 (7th Cir. 2015).

Student, who identified as Jewish and who had attended school where other students had engaged in anti-Semitic activity, failed to sufficiently plead claim for promissory estoppel against school district, through board of education, under Colorado law, arising from school's alleged failure to address activity; although student alleged that school issued her student handbook that contained promise that there would be no retaliation for reporting discrimination, that she affirmatively relied on handbook when she reported, that reliance was reasonable, and that she faced retaliation, she did not sufficiently allege how she relied on handbook to her detriment, and did not allege that she changed position based on handbook or that she incurred damages compensable through contractual remedies. Restatement (Second) of Contracts § 90. I.G. by and through Grunspan v. Jefferson County School District through Board of Education for Jefferson County School District, 452 F. Supp. 3d 989, 381 Ed. Law Rep. 289 (D. Colo. 2020).

Under District of Columbia law, borrowers stated a claim against lender for promissory estoppel by alleging that lender promised, among other things, to correct all errors in certain loan documents, to correct inaccurate and misleading information it had furnished to credit reporting agencies, and to cease reporting inaccurate and misleading information to the agencies, that lender made these promises with the intent that borrowers would rely on them, and that borrowers did, in fact, rely on lender's promises to their detriment, by, among other things, making payments to lender, engaging counsel to represent them before lender, continuing to escrow payments, providing lender with requested documentation, and negotiating with lender in good faith. Donald Marshall Berlin v. Bank of America, N.A., 101 F. Supp. 3d 1 (D.D.C. 2015).

District of Columbia law generally prohibits litigants from asserting a claim for promissory estoppel when an express contract governs the parties' conduct. Davis v. World Savings Bank, FSB, 806 F. Supp. 2d 159 (D.D.C. 2011).

Social sector data company's complaint against software company pled sufficient facts to state claim for promissory estoppel; complaint contained allegations that software company made unambiguous promises to data company that jointly-developed software product would be jointly-owned and that value obtained and revenues derived from such joint development would be equitably paid to data company, data company reasonably and justifiably relied on such promises and conduct to its detriment, that its reliance was foreseeable to software company, and that it was damaged. Mission Measurement Corporation v. Blackbaud, Inc., 287 F. Supp. 3d 691 (N.D. Ill. 2017).

Under Michigan law, mortgagors stated valid promissory estoppel claim based on loan servicer's written promise to adjourn foreclosure sale pending a loan modification review; mortgagors could seek to side aside the sale even after expiration of statutory redemption period because the alleged broken promise to adjourn the sale was a potential irregularity arising out of the foreclosure process, not just an issue concerning the modification negotiations, mortgagors sufficiently alleged that they would have been in a better position to preserve their property interest but for the promise, and mortgagors' allegations referred to a new review that servicer allegedly agreed to complete, not a previously completed review. Mich. Comp. Laws Ann. § 600.3220. Etts v. Deutsche Bank National Trust Company, 126 F. Supp. 3d 889 (E.D. Mich. 2015).

Insureds, a same sex, male couple who sought to parent a child using in vitro fertilization (IVF) with help of third-party surrogate, did not reasonably rely on insurance plan administrator's letter preapproving coverage for fertility enhancement procedures, which was sent in mistaken belief that one insured was a woman, thus precluding insureds' promissory estoppel claim arising from administrator's subsequent letter disclaiming coverage for surrogacy services; it would have been unreasonable for insureds to have read preapproval letter to include coverage for third-party surrogacy services, as letter was not a knowing agreement to provide coverage for such services, which were unavailable under the plan, and legal and health care provider expenses insureds

allegedly sustained in reliance on the preapproval letter were incurred after administrator sent subsequent letter disclaiming coverage for surrogacy services. Uddoh v. United Healthcare, 254 F. Supp. 3d 424 (E.D. N.Y. 2017).

Employee sufficiently alleged that injustice could only be avoided by enforcement of employer's promise in employee handbook not to terminate employee in retaliation for reporting safety violations, so as to state claim for promissory estoppel under Vermont law; employee alleged that he relied upon employer's policies in reporting health and safety concerns and that his adherence to those policies prompted his termination. Cole v. Foxmar Inc., 387 F. Supp. 3d 370 (D. Vt. 2019).

Landowners may be bound under the doctrine of promissory estoppel to uphold legally insufficient covenants, but cannot be bound by a legally ineffective covenant to which they never agreed. West's Ga.Code Ann. § 13–3–44(a). Marino v. Clary Lakes Homeowners Ass'n, Inc., 747 S.E.2d 31 (Ga. Ct. App. 2013).

Promissory estoppel is simply a substitute for consideration, not a substitute for an agreement between parties; thus, where there is evidence of adequate consideration, the doctrine of promissory estoppel is of no consequence. Profits Plus Capital Management, LLC v. Podesta, 332 P.3d 785 (Idaho 2014).

Inventor of websites and his two companies failed to explain in complaint how they purportedly relied on chairman of companies statement in e-mail that he had no interest in profiting from inventor's design work, and thus failed to allege detrimental reliance, as required to state claim against chairman for promissory estoppel; inventor and his companies did not do something, or refrain from doing something in reliance on e-mail. Schroeder v. Pinterest Inc., 17 N.Y.S.3d 678, 2015 WL 5794032 (App. Div. 1st Dep't 2015).

Men's tailored clothing manufacturer's claim for promissory estoppel was impermissibly predicated on the same allegations that it made in its breach of contract cause of action against retail clothier, namely that clothier terminated oral agreement without providing requisite notice, and thus dismissal of promissory estoppel claim as duplicative was warranted. Martin Greenfield Clothiers, Ltd. v. Brooks Brothers Group, Inc., 175 A.D.3d 636, 107 N.Y.S.3d 83 (2d Dep't 2019).

Prospective lessor did not make a clear an unambiguous promise during negotiations that the completed transaction would be consummated or that prospective lessee would be able to move into the residential property in the absence of an executed agreement, and therefore lessor could not liable for promissory estoppel based on the failure to execute a lease with option to purchase, where negotiations involved months of e-mails ending in an e-mail containing a draft lease agreement and a return e-mail with proposed revisions to the agreement. DelMestro v. Marlin, 168 A.D.3d 813, 92 N.Y.S.3d 312 (2d Dep't 2019).

Any reliance on the defendants' alleged promises and representations in letter of intent would have been unreasonable, precluding plaintiff's claims for promissory estoppel and fraud arising from the letter, which provided that the parties shall negotiate to arrive at mutually acceptable definitive agreements regarding a potential joint venture and loan and that the parties each reserved the right to withdraw from further negotiations at any time if, in the sole judgment of either or both, it was in either party's best interest to do so, without further liability or obligation to the other. New York Military Academy v. NewOpen Group, 142 A.D.3d 489, 36 N.Y.S.3d 199 (2d Dep't 2016).

Software company did not reasonably rely on venture-capital firm's alleged promise to proceed with investment in company, thus precluding claims for promissory estoppel, negligent misrepresentation, and fraud based on firm's failure to invest, where parties signed term sheet in which they agreed that there would be no binding investment agreement until their execution of a written contract, and no such contract was ever executed. StarVest Partners II, L.P. v. Emportal, Inc., 101 A.D.3d 610, 957 N.Y.S.2d 93 (1st Dep't 2012).

Promissory estoppel provides for the enforceability of an otherwise void or legally unenforceable agreement when one of the parties has acted to his or her detriment because of a representation or promise made by the other party as to future events. Knorr v. Norberg, 2015 ND 284, 872 N.W.2d 323 (N.D. 2015).

Tire dealer and its owner could not recover on promissory estoppel claim against tire manufacturer, following manufacturer's termination of dealership agreement and subsequent failure to ship tires needed for dealer's supply contract with federal government; relationship between the parties was governed by contract, and any expectation by dealer and its owner of tire shipments after termination was unreasonable given the pricing documents' language that this was "not a guarantee to supply" or a commitment to supply any tires. Bridgestone Americas Tire Operations, LLC v. Harris, 2018-Ohio-63, 104 N.E.3d 81 (Ohio Ct. App. 5th Dist. Stark County 2018), appeal not allowed, 152 Ohio St. 3d 1481, 2018-Ohio-1990, 98 N.E.3d 295 (2018).

Automobile liability insurer's letter stating $12,000 value of accident victim's claim and inquiring of victim's willingness to settle for that amount was not an actual promise to settle for $12,000 and, therefore, could not support victim's claim of promissory estoppel to settle for that amount after insurer failed to accept *Stowers* demand to settle for liability coverage limits; letter reflected the fluid and indefinite nature of ongoing negotiation process and at most showed an offer to settle conditioned on victim's acceptance. Davis v. Texas Farm Bureau Insurance, 470 S.W.3d 97 (Tex. App. Houston 1st Dist. 2015).

[END OF SUPPLEMENT]

Footnotes

1 Alaska Trademark Shellfish, LLC v. State, Dept. of Fish and Game, 172 P.3d 764 (Alaska 2007); Brady v. State, 965 P.2d 1 (Alaska 1998).

2 Doe v. Univision Television Group, Inc., 717 So. 2d 63 (Fla. Dist. Ct. App. 3d Dist. 1998).

3 American Casual Dining, L.P. v. Moe's Southwest Grill, L.L.C., 426 F. Supp. 2d 1356 (N.D. Ga. 2006). Promissory estoppel claims relying on contracts were subsumed by claims for breach of those contracts. Soldiers', Sailors', Marines' and Airmen's Club, Inc. v. Carlton Regency Corp., 30 Misc. 3d 352, 911 N.Y.S.2d 774 (Sup 2010).

4 Premier Technical Sales, Inc. v. Digital Equipment Corp., 11 F. Supp. 2d 1156 (N.D. Cal. 1998), aff'd in part, rev'd in part on other grounds, 202 F.3d 279 (9th Cir. 1999).

5 Newton Tractor Sales, Inc. v. Kubota Tractor Corp., 233 Ill. 2d 46, 329 Ill. Dec. 322, 906 N.E.2d 520 (2009).

6 Barnhart v. New York Life Ins. Co., 141 F.3d 1310 (9th Cir. 1998).

7 Indiana Bureau of Motor Vehicles v. Ash, Inc., 895 N.E.2d 359 (Ind. Ct. App. 2008); Deli v. University of Minnesota, 578 N.W.2d 779, 126 Ed. Law Rep. 431 (Minn. Ct. App. 1998); Baker v. Ayres and Baker Pole and Post, Inc., 2007 WY 185, 170 P.3d 1247 (Wyo. 2007).

8 Mellon v. Cessna Aircraft Co., 7 F. Supp. 2d 1180 (D. Kan. 1998).

9 Wagner v. Reuter, 2009 WY 75, 208 P.3d 1317 (Wyo. 2009).

10 In re Montagne, 431 B.R. 72 (Bankr. D. Vt. 2010) (applying Vermont law).

11 World Championship Wrestling, Inc. v. GJS Intern., Inc., 13 F. Supp. 2d 725 (N.D. Ill. 1998), order aff'd, 191 F.3d 457 (7th Cir. 1999).

12 Halls Ferry Investments, Inc. v. Smith, 985 S.W.2d 848 (Mo. Ct. App. E.D. 1998).

13 Saey v. Xerox Corp., 31 F. Supp. 2d 692 (E.D. Mo. 1998).

14 McMahon v. Digital Equipment Corp., 162 F.3d 28 (1st Cir. 1998).

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28 Am. Jur. 2d Estoppel and Waiver § 55

American Jurisprudence, Second Edition | May 2021 Update

Estoppel and Waiver
Romualdo P. Eclavea, J.D.; Eric C. Surette, J.D.

Part One. Estoppel

III. Equitable Estoppel or Estoppel in Pais

B. Elements, Requisites, and Grounds

2. As Related to Party to Be Estopped

c. Promissory Estoppel

§ 55. Effect of or on contract—Statute of frauds

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Estoppel 85

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Promissory estoppel as basis for avoidance of U.C.C. statute of frauds (U.C.C. sec. 2-201), 29 A.L.R.4th 1006
Comment Note.—Promissory estoppel as basis for avoidance of statute of frauds, 56 A.L.R.3d 1037

In some jurisdictions, promissory estoppel allows the enforcement of promises that would otherwise be defeated by the statute of frauds.[1] However, promissory estoppel impinges upon accepted rules of contract formation, and thus, even courts that allow promissory estoppel to override the statute of frauds do so only in limited circumstances.[2] The doctrine of promissory estoppel as a bar to the assertion of a statute of frauds defense applies only in those rare cases when the circumstances are such as to render it unconscionable to deny the oral promise upon which the promisee has relied.[3] In some cases, it may be required that before the doctrine of promissory estoppel can be invoked in a case involving the statute of frauds, the promisee must first show by competent evidence that a valid and otherwise enforceable contract was entered into by the parties.[4] However, promises that do not conform to the statute of frauds will often be equally unenforceable under a promissory estoppel theory.[5] Thus, an

employee cannot avoid the statute of frauds based solely upon his or her detrimental reliance on an employer's oral promise of continued employment.[6]

For purposes of a promissory estoppel claim, the courts in some jurisdictions hold that it usually is unreasonable to rely on a substantial promise that has not been reduced to writing.[7] In other jurisdictions, in order for promissory estoppel to defeat the statute of frauds, there must be proof of an additional promise to sign a written agreement that complies with the statute and that there was reliance on this promise.[8] Finally, in some jurisdictions, promissory estoppel may not be applied to allow recovery where the statute of frauds bars contract claims.[9]

CUMULATIVE SUPPLEMENT

Cases:

Only when the alleged promise is a promise to sign an already existing written agreement that itself would satisfy the requirements of Texas' statute of frauds, will a claim of promissory estoppel survive to circumvent the statute of frauds. V.T.C.A., Bus. & C. § 26.02(b). Thompson v. Bank of America, N.A., 13 F. Supp. 3d 636 (N.D. Tex. 2014).

Under Missouri law, equitable exceptions to the statute of frauds generally fall into three broad categories: perpetration of fraud, partial or full performance, and promissory estoppel. Topchian v. JPMorgan Chase Bank, N.A., 760 F.3d 843 (8th Cir. 2014).

Under Michigan law, the doctrine of promissory estoppel generally may not be applied to a statute of frauds case involving the sale of real estate. M.C.L.A. § 566.132(2)(b). McCann v. U.S. Bank, N.A., 873 F. Supp. 2d 823 (E.D. Mich. 2012).

Even assuming that Chapter 7 debtor's former husband could establish a promise on debtor's part to transfer title to former marital residence into his name alone, that promise would not provide basis to overcome New York statute of frauds on promissory estoppel theory, and to treat property as if it had been transferred to husband prepetition and was thus removed from "property of the estate," absent showing that former husband, who had voluntarily released debtor from her obligation to repay sum that he had advanced to acquire property initially, would otherwise suffer some unconscionable injury. N.Y. General Obligations Law § 5-703. In re Schulter, 585 B.R. 670 (Bankr. E.D. N.Y. 2018).

A claim for promissory estoppel allows enforcement of promises that would otherwise be defeated by the statute of frauds. First Bank of Georgia v. Robertson Grading, Inc., 761 S.E.2d 628 (Ga. Ct. App. 2014).

Mortgagor could not avail itself of promissory estoppel in mortgagee's action for foreclosure, where alleged agreement for pre-commitment to loan money was invalid for failure to comply with Statute of Frauds and, thus, there was no complete promise to be enforced. Bank of Commerce v. Jefferson Enterprises, LLC, 303 P.3d 183 (Idaho 2013).

Plaintiff sufficiently pled promissory estoppel claim against his sister, even though purported oral agreement was barred by statute of frauds, by alleging that sister made unambiguous promises to provide him with half of income generated during pendency of his divorce by assets sister inherited from parties' mother, to transfer half of assets upon finality of divorce, and to name him as sole beneficiary of life insurance policy, and that plaintiff detrimentally relied on those promises by paying approximately $2 million in mother's estate taxes in exchange, thereby suffering potentially unconscionable injury. McKinney's General Obligations Law § 5–701(a)(9). Castellotti v. Free, 27 N.Y.S.3d 507 (App. Div. 1st Dep't 2016).

Statute of frauds did not bar former employees' claims against local chapter of union for severance pay; although there was no written severance policy, parties agreed that there was policy in place, and only issue was number of weeks of pay to which employees were entitled. McKinney's General Obligations Law § 5–701. Norris v. Social Services Employee Union 371, 963 N.Y.S.2d 562 (N.Y. City Civ. Ct. 2013).

[END OF SUPPLEMENT]

Footnotes

1 Johnson v. University Health Services, Inc., 161 F.3d 1334 (11th Cir. 1998); American Pride Co-op. v. Seewald, 968 P.2d 139 (Colo. App. 1998).

2 Aircraft Inventory Corp. v. Falcon Jet Corp., 18 F. Supp. 2d 409, 35 U.C.C. Rep. Serv. 2d 815 (D.N.J. 1998).

3 Ellis v. Provident Life & Accident Ins. Co., 3 F. Supp. 2d 399 (S.D. N.Y. 1998), judgment aff'd, 172 F.3d 37 (2d Cir. 1999).

4 Bittel v. Farm Credit Services of Cent. Kansas, 265 Kan. 651, 962 P.2d 491 (1998).

5 Johnson v. University Health Services, Inc., 161 F.3d 1334 (11th Cir. 1998).

6 Popanz v. Peregrine Corp., 1998 ME 95, 710 A.2d 250 (Me. 1998).
As to promissory estoppel in employment situations, generally, see § 56.

7 Johnson v. University Health Services, Inc., 161 F.3d 1334 (11th Cir. 1998).

8 Choi v. McKenzie, 975 S.W.2d 740 (Tex. App. Corpus Christi 1998).

9 World Championship Wrestling, Inc. v. GJS Intern., Inc., 13 F. Supp. 2d 725 (N.D. Ill. 1998), order aff'd, 191 F.3d 457 (7th Cir. 1999).

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28 Am. Jur. 2d Estoppel and Waiver § 56

American Jurisprudence, Second Edition | May 2021 Update

Estoppel and Waiver
Romualdo P. Eclavea, J.D.; Eric C. Surette, J.D.

Part One. Estoppel

III. Equitable Estoppel or Estoppel in Pais

B. Elements, Requisites, and Grounds

2. As Related to Party to Be Estopped

c. Promissory Estoppel

§ 56. Employment

Topic Summary | Correlation Table | References

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In some jurisdictions, promissory estoppel is not recognized as an exception to the at-will employment status doctrine.[1] Employment is at will, terminable at any time by either party, with or without cause, absent an express agreement to the contrary, and reliance on a supposed promise of continued employment is unjustified.[2]

In other jurisdictions, an employee may recover under promissory estoppel, in certain circumstances, where an employment contract is otherwise unenforceable or where the employee is an at-will employee.[3] In an employment situation, promissory estoppel requires proof of an unambiguous promise of employment communicated from the employer to the employee; a reasonable reliance on the promise of employment by the employee; that the reliance was expected and foreseeable by the employer; and that the reliance was to the employee's detriment.[4] Thus, an at-will employee could not have reasonably relied on an Internet job posting in believing that, if hired, he would not be terminated in less than six months for failure to obtain a commercial driver's license (CDL) for purposes of his promissory estoppel claim where the employee could not reasonably have understood the employer's advertisement as a promise that he would be permanently employed because it stated that the position opening was for a temporary position.[5]

Once an employer announces a specific policy or practice, especially in light of the fact that he or she expects employees to abide by the same, the employer may not treat its promises as illusory.[6] A terminated employee may be entitled to enforce handbook provisions under a theory of promissory estoppel if he or she can demonstrate that the employer should reasonably

have expected the employee to consider the handbook as a commitment from the employer to follow the particular policy; that the employee reasonably relied on the policy to his or her detriment; and that injustice can be avoided only by the enforcement of the policy.[7]

An employee cannot recover reliance damages of lost wages under the doctrine of promissory estoppel without first establishing the existence of a contract of employment, either express or implied.[8] A damages remedy for a promissory estoppel claim is limited to damages actually resulting from detrimental reliance and will not include the benefit of altering employment status from an at-will relationship to a permanent one that requires just cause for termination; such damages do not include restoration of at-will employment or damages for lost wages.[9]

CUMULATIVE SUPPLEMENT

Cases:

Former employees' promissory estoppel claims against former employer, which were based on vice-president's promise that she would formally designate the "Term" employees as "Regular" status employees, did not necessarily require interpretation of collective bargaining agreement (CBA), and thus Section 301 of the Labor Management Relations Act did not preempt state court jurisdiction over the claims; promise element did not turn on whether promise would have been valid or possible to carry out under the CBA, but rather whether vice president made the promise expecting that the employees would rely on it, and whether they did. Labor Management Relations Act, 1947 § 301, 29 U.S.C.A. § 185(a). Canedo v. Pacific Bell Telephone Co., 341 F. Supp. 3d 1116 (S.D. Cal. 2018).

Under Michigan law, staffing agency's offer of employment to applicant for federal government position did not contain distinguishing features that would alter traditional at-will employment relationship, and thus offer was insufficient to support applicant's promissory estoppel claim; fact that applicant turned down other offer and that staffing agency had financial incentive to fill position quickly did not amount to distinguishing features. Kostanko v. MVM, Inc., 365 F. Supp. 3d 881 (W.D. Mich. 2018).

Under Minnesota law, female former employee stated claim for promissory estoppel against employer by alleging that, before she entered into employment contract with employer, employer posted two open positions, namely, her position and another position, that the two posted positions offered the same salary range, with a maximum starting salary of $70,000, that employer's representatives informed employee that the two positions offered the same benefits, that, in reliance on those statements, employee accepted position and moved her family from Norway to Minnesota, that employer breached its promise and, in fact, did not provide a salary and benefits identical to those offered to her male counterpart, who accepted the other open position, and that it would be unjust not to enforce employer's promise. Ewald v. Royal Norwegian Embassy, 902 F. Supp. 2d 1208 (D. Minn. 2012).

Under Pennsylvania law, employee's at-will status barred his claim against employer for promissory estoppel based on alleged promise not to terminate him in retaliation for his complaints about his supervisor. Cathcart v. Micale, 402 F. Supp. 3d 110 (E.D. Pa. 2019).

Former employee, who alleged that employer promised her that she could work from home for two weeks following foot surgery, did not establish promissory estoppel claim, given there was no evidence that employer promised her that she could not be discharged from her employment during this period and employee admitted that she scheduled her foot surgery before becoming aware that she would be permitted to work from home; there was no evidence that there was any promise to change the at-will status of employee's employment or to waive satisfactory performance during this period. Wallace v. Eckert, Seamans, Cherin & Mellott, LLC, 57 A.3d 943 (D.C. 2012).

A valid at-will employment disclaimer defeats an employee's promissory-estoppel claim; the existence of the disclaimer makes it unreasonable for an employee to rely on any subsequent understanding that his employment would be anything other than at will. Kuhl v. Wells Fargo Bank, N.A., 2012 WY 85, 281 P.3d 716 (Wyo. 2012).

[END OF SUPPLEMENT]

Footnotes

1 Permenter v. Crown Cork & Seal Co., Inc., 38 F. Supp. 2d 372 (E.D. Pa. 1999), aff'd, 210 F.3d 358 (3d Cir. 2000).

2 Allied Vista, Inc. v. Holt, 987 S.W.2d 138 (Tex. App. Houston 14th Dist. 1999).

3 Lierz v. Coca Cola Enterprises, Inc., 36 F. Supp. 2d 1295 (D. Kan. 1999).

4 Kalush v. Deluxe Corp., 171 F.3d 489 (7th Cir. 1999).

5 Watson v. Public Service Co. of Colorado, 207 P.3d 860 (Colo. App. 2008), cert. denied, 2009 WL 1280496 (Colo. 2009).

6 Price v. Public Service Co. of Colorado, 1 F. Supp. 2d 1216 (D. Colo. 1998).

7 Duran v. Flagstar Corp., 17 F. Supp. 2d 1195 (D. Colo. 1998).
Promissory estoppel was inapplicable where an employee handbook stated that the employer would "give particular attention to the length of service with the Company" when making layoffs but where the handbook also contained a disclaimer that "NOTHING IN THIS HANDBOOK IS INTENDED TO BE UNDERSTOOD AS AN EMPLOYMENT CONTRACT BETWEEN THE COMPANY AND THE EMPLOYEE" as the disclaimer prevented the layoff policy from being a promise. Bouwens v. Centrilift, 974 P.2d 941 (Wyo. 1999).

8 Lierz v. Coca Cola Enterprises, Inc., 36 F. Supp. 2d 1295 (D. Kan. 1999).

9 Wyatt v. BellSouth, Inc., 18 F. Supp. 2d 1324 (M.D. Ala. 1998).

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28 Am. Jur. 2d Estoppel and Waiver § 57

American Jurisprudence, Second Edition | May 2021 Update

Estoppel and Waiver
Romualdo P. Eclavea, J.D.; Eric C. Surette, J.D.

Part One. Estoppel

III. Equitable Estoppel or Estoppel in Pais

B. Elements, Requisites, and Grounds

2. As Related to Party to Be Estopped

d. Silence, Acquiescence, or Delay; Acceptance of Benefits

§ 57. Silence or inaction

Topic Summary | Correlation Table | References

West's Key Number Digest

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Estoppel to assert that article annexed to realty is or is not a fixture, 60 A.L.R.2d 1209

Silence that amounts to misrepresentation or concealment of facts can satisfy the "conduct" element of the test for equitable estoppel.[1] Estoppel may arise by silence where one is under a duty to speak or act,[2] and the ensuing silence is wrongful and misleading.[3] Estoppel by silence or inaction is often referred to as estoppel by "standing by," and that phrase in this connection has almost lost its primary significance of actual presence or participation in the transaction and generally covers any silence where there are knowledge and a duty to make a disclosure.[4] The rule is that a person who stands by and sees another about to commit, or in the course of committing, an act infringing on his or her rights, and fails to assert his or her rights or title, will be estopped from thereafter asserting them.[5] The principle underlying such estoppels is embodied in the maxim "one who is silent when he ought to speak will not be heard to speak when he ought to be silent."[6] Where the circumstances are such as to require a silent person to speak so that an injured person may take steps to protect himself or herself against a loss that might

otherwise result, then the former will be estopped from asserting the defense that he or she would have had but for his or her silence.[7] Silence, when there is a duty to speak, is deemed equivalent to concealment.[8]

On the other hand, mere silence or inaction is generally not a ground for estoppel unless there is a duty to speak or act.[9] Estoppel as a bar to the assertion of a claim may not be invoked by a party to whom no duty to speak is owed.[10] There must be some element of turpitude or negligence connected with the silence or inaction by which the other party is misled to his or her injury.[11] In other words, to give rise to an estoppel by silence or inaction, there must be a right and an opportunity[12] to speak and, in addition, an obligation or duty to do so.[13]

The mere fact that another may act to his or her prejudice if the true state of things is not disclosed does not render silence culpable or make it operate as an estoppel against one who owes no duty of active diligence to protect the other party from injury.[14] There is no obligation to disclose matters of which the other party has actual or constructive knowledge[15] or as to which the information or means of acquiring information of the two parties is equal.[16] Generally, a person is required to speak only when common honesty and fair dealing demand that he or she must do so,[17] and in order that a party may be estopped by silence, there must be on his or her part an intent to mislead,[18] or at least a willingness that others should be deceived,[19] together with knowledge or reason to suppose that someone is relying on such silence or inaction and in consequence thereof is acting or is about to act as he or she would not act otherwise.[20] Thus, to work an estoppel, silence must amount to bad faith, and this cannot be inferred from facts of which the party sought to be estopped has no knowledge.[21] Accordingly, a majority shareholder would be barred from asserting estoppel against minority shareholders who remained silent as he arranged the exchange of substantially all of a corporation's assets where it was the majority shareholder's omission, in failing to give the minority shareholders statutory notice of a proposed exchange and their right to dissent and an opportunity to vote, that gave rise to the shareholders' silence and the majority shareholder's alleged reliance on that silence.[22] Likewise, by participating, as an unsuccessful bidder, in the sale of estate property free and clear of all competing interests without ever asserting a right in the property as an alleged adverse possessor, and without ever objecting to the sale or seeking adequate protection for her purported interest, an adjoining landowner would be equitably estopped from asserting any adverse possessory interest.[23] However, the failure of an employer's vice president of human resources to object when an employee discussed possible employment opportunities with a competitor would not estop the employer from enforcing the noncompetition agreement against the employee where the vice president did not give the employee express permission to work for the competitor despite a noncompetition agreement and was not given all the relevant information.[24] Finally, a utility's failure to alert other utilities who purchased electricity generated at the Hoover Dam of its dissatisfaction with the agency's formula for refunding surplus revenues from such sales affords no basis for estoppel to prevent the utility from the asserting claim where the utility was not in privity of contract with the other utilities, and had no special relationship with them, and thus had no duty to speak out.[25]

An owner of personalty who stands by and sees another sell or mortgage it to a third person without making known his or her title will be estopped afterwards from asserting his or her title against the purchaser or mortgagee.[26]

The courts are especially disposed to uphold a claim of estoppel by silence or inaction where one party with full knowledge of the facts has stood by without asserting his or her rights or raising any objection while the other party, acting on the faith of such apparent acquiescence, incurred large expenditures that will be wholly or partially lost if such rights or objections are subsequently given effect.[27]

Footnotes

1 Maher v. Tietex Corp., 331 S.C. 371, 500 S.E.2d 204 (Ct. App. 1998).

2 Longley v. Knapp, 1998 ME 142, 713 A.2d 939 (Me. 1998); Heuer v. Heuer, 152 N.J. 226, 704 A.2d 913 (1998); In Interest of Moragas, 972 S.W.2d 86 (Tex. App. Texarkana 1998).

3 Dunkin' Donuts Inc. v. Panagakos, 5 F. Supp. 2d 57 (D. Mass. 1998).

4 Vickers v. Peaker, 227 Ark. 587, 300 S.W.2d 29 (1957); American Life Ins. Co. v. Hauer, 218 Miss. 560, 67 So. 2d 523 (1953).

As to necessity of knowledge of facts by one to be estopped, see § 44.

5 McCartney v. Schuette, 243 Iowa 1358, 54 N.W.2d 462 (1952).

6 Vickers v. Peaker, 227 Ark. 587, 300 S.W.2d 29 (1957); Weiland v. Turkelson, 38 N.J. Super. 239, 118 A.2d 689 (App. Div. 1955); Huff v. Northern Pac. Ry. Co., 38 Wash. 2d 103, 228 P.2d 121 (1951).

7 Mohr v. Universal C.I.T. Credit Corp., 216 Md. 197, 140 A.2d 49 (1958).

8 Reichert v. Reichert, 77 S.D. 258, 90 N.W.2d 403 (1958); Concord Oil Co. v. Alco Oil & Gas Corp., 387 S.W.2d 635 (Tex. 1965).

9 National Data Payment Systems, Inc. v. Meridian Bank, 18 F. Supp. 2d 543 (E.D. Pa. 1998), aff'd, 212 F.3d 849 (3d Cir. 2000); Prime Medica Associates v. Valley Forge Ins. Co., 2009 PA Super 39, 970 A.2d 1149 (2009), appeal denied, 605 Pa. 688, 989 A.2d 918 (2010).

10 Southern California Edison Co. v. U.S., 43 Fed. Cl. 107 (1999), rev'd on other grounds, 226 F.3d 1349 (Fed. Cir. 2000).

11 Thompson v. Gaudette, 148 Me. 288, 92 A.2d 342 (1952); Terrell Hills Baptist Church v. Pawel, 286 S.W.2d 204 (Tex. Civ. App. Austin 1956).

12 Thompson v. Gaudette, 148 Me. 288, 92 A.2d 342 (1952); In re Gibson's Estate, 7 Wis. 2d 506, 96 N.W.2d 859 (1959).

13 Karsznia v. Kelsey, 262 S.W.2d 844 (Mo. 1953); Weiland v. Turkelson, 38 N.J. Super. 239, 118 A.2d 689 (App. Div. 1955); Willadsen v. Crawford, 75 S.D. 161, 60 N.W.2d 692 (1953) (stating that silence can never be the basis of an estoppel unless there is a duty to speak); Barbee Mill Co. v. State, 43 Wash. 2d 353, 261 P.2d 418 (1953); In re Gibson's Estate, 7 Wis. 2d 506, 96 N.W.2d 859 (1959).

14 Thompson v. Gaudette, 148 Me. 288, 92 A.2d 342 (1952); In re Gibson's Estate, 7 Wis. 2d 506, 96 N.W.2d 859 (1959).

15 Karsznia v. Kelsey, 262 S.W.2d 844 (Mo. 1953); Weiland v. Turkelson, 38 N.J. Super. 239, 118 A.2d 689 (App. Div. 1955).

16 Weiland v. Turkelson, 38 N.J. Super. 239, 118 A.2d 689 (App. Div. 1955).

17 Weiland v. Turkelson, 38 N.J. Super. 239, 118 A.2d 689 (App. Div. 1955); Cantrell v. Booher, 201 Va. 649, 112 S.E.2d 883 (1960).

18 Weiland v. Turkelson, 38 N.J. Super. 239, 118 A.2d 689 (App. Div. 1955); Cantrell v. Booher, 201 Va. 649, 112 S.E.2d 883 (1960).

19 Weiland v. Turkelson, 38 N.J. Super. 239, 118 A.2d 689 (App. Div. 1955).

20 Weiland v. Turkelson, 38 N.J. Super. 239, 118 A.2d 689 (App. Div. 1955); Cantrell v. Booher, 201 Va. 649, 112 S.E.2d 883 (1960).

21 Victory Cab Co. v. Churchill Downs, 312 Ky. 363, 227 S.W.2d 924 (1950).

22 Hansen v. 75 Ranch Co., 1998 MT 77, 288 Mont. 310, 957 P.2d 32 (1998).

23 In re Colarusso, 382 F.3d 51 (1st Cir. 2004).

24 Bridgestone/Firestone, Inc. v. Lockhart, 5 F. Supp. 2d 667 (S.D. Ind. 1998).

25 Southern California Edison Co. v. U.S., 43 Fed. Cl. 107 (1999), rev'd on other grounds, 226 F.3d 1349 (Fed. Cir. 2000).

26 McPherson v. Hicks, 232 Ark. 427, 338 S.W.2d 201 (1960).

27 Trustees of Internal Imp. Fund v. Bass, 67 So. 2d 433 (Fla. 1953).

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§ 58. Acquiescence

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Estoppel 89.1, 90

Generally, equitable estoppel is applied to transactions where it would be unconscionable to allow a person to maintain a position inconsistent with one in which he or she acquiesced.[1] Acquiescence arises where a complainant has full knowledge of his or her rights and the material facts and remains inactive for a considerable time; freely does what amounts to recognition of the complained of act; or acts in a manner inconsistent with the subsequent repudiation, which leads the other party to believe the act has been approved.[2] "Acquiescence" is also defined as the release or abandonment of one's rights that occurs when one stands by and sees another deal with one's property, in a manner inconsistent with one's own rights, without objection.[3] Thus, acquiescence by owners of a road in the use of the road by adjacent property owners does not estop the owners of the road from denying the adjacent property owners' claim of easement by estoppel.[4] Also, a franchisee cannot establish waiver and estoppel defenses to a franchiser's claim for breach of fast-food franchise agreements in the absence of any showing that the franchisor even implicitly acquiesced in the franchisee's withholding of payments under the agreements during a dispute over a service area.[5]

There can be no acquiescence where there is no knowledge, the acquiescence must have been with actual or constructive knowledge of the facts, and not induced by deceptive or misleading representations or assurances by the other party.[6]

Acquiescence is not dependent on a specific change of position by the party relying on estoppel.[7]

Declarations or conduct that might not of themselves amount to an estoppel may become such by acquiescence.[8] In fact, it is often impossible to distinguish clearly between such estoppels, and the courts in many instances use the term "acquiescence" as covering or including all the others; "acquiescence," as the term is here used, however, refers to an implied consent and need not involve anything in the nature of a positive affirmation.[9] Acquiescence is a specie of waiver.[10]

Footnotes

1 Kentucky Hosp. Ass'n Trust v. Chicago Ins. Co., 978 S.W.2d 754 (Ky. Ct. App. 1998).
As to inconsistent positions, generally, see §§ 65 to 72.

2 Cantor Fitzgerald, L.P. v. Cantor, 724 A.2d 571 (Del. Ch. 1998).

3 Panhandle Eastern Pipe Line Co. v. Tishner, 699 N.E.2d 731 (Ind. Ct. App. 1998) (holding modified on other grounds by, Fraley v. Minger, 829 N.E.2d 476 (Ind. 2005)).

4 Scott v. Cannon, 959 S.W.2d 712 (Tex. App. Austin 1998).

5 Burger King Corp. v. Weaver, 169 F.3d 1310, 43 Fed. R. Serv. 3d 448 (11th Cir. 1999).

6 In re Gibson's Estate, 7 Wis. 2d 506, 96 N.W.2d 859 (1959).
As to knowledge of facts by party to be estopped, generally, see § 44.

7 McDonald v. Burke, 288 S.W.2d 363 (Ky. 1955).

8 Battle v. Patsy Auto Sales, 89 Ohio App. 231, 45 Ohio Op. 463, 59 Ohio L. Abs. 391, 99 N.E.2d 812 (1st Dist. Hamilton County 1951).

9 Schiffelbein v. Sisters of Charity of Leavenworth, 190 Kan. 278, 374 P.2d 42 (1962).

10 Cantor Fitzgerald, L.P. v. Cantor, 724 A.2d 571 (Del. Ch. 1998).

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§ 59. Delay

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Estoppel 95, 96

Where a person, knowing his or her rights, takes no steps to enforce those rights until the adverse party has, in good faith, changed his or her position such that he or she cannot be restored to his or her former state if the rights are enforced, the delay becomes inequitable, and the person is estopped from asserting the rights.[1] However, while delay may, when associated with other essential conditions, be an element in, or a basis for, estoppel, as indicating an intention to abandon rights or a negligent failure to assert them,[2] there is no necessary estoppel arising from the mere lapse of time alone.[3] Thus, a cousin did not have an undivided one-half interest in property through estoppel or ratification although the cousin paid taxes on half the property for over 50 years and the record owner's sons failed to include a full ownership interest in the property in the original succession proceedings as the sons did not delay in filing suit to quiet title once they learned of their full ownership interest; the sons could trace title to a recorded sheriff's deed to the record owner; and the cousin did not have an act translative of title, did not acquire ownership by acquisitive prescription, and did not inherit the property.[4]

There is no element of turpitude or negligence and therefore no basis for estoppel because of delay that is due to excusable ignorance of the facts.[5] Also, no estoppel by delay may be found where there is no showing of prejudice from the delay.[6]

Footnotes

1 Vanice v. Oehm, 255 Neb. 166, 582 N.W.2d 615 (1998).

2 Devine v. Cordovado, 15 Alaska 232, 1954 WL 1354 (Terr. Alaska 1954); In re Stoball's Will, 211 Miss. 15, 50 So. 2d 635 (1951).

3 City of Miami Beach v. State ex rel. Wood, 56 So. 2d 520 (Fla. 1952); Bentley v. Cam, 362 Mich. 78, 106 N.W.2d 528 (1960).

4 Scobee v. Brame, 721 So. 2d 977 (La. Ct. App. 3d Cir. 1998), writ denied, 736 So. 2d 833 (La. 1999).

5 Bentley v. Cam, 362 Mich. 78, 106 N.W.2d 528 (1960).

6 Saaf v. Duluth Police Pension Relief Ass'n, 240 Minn. 60, 59 N.W.2d 883 (1953).

As to necessity of prejudice to party claiming estoppel, generally, see § 76.

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§ 60. Acceptance of benefits

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Estoppel 92

A.L.R. Library

Separation agreement as barring rights of surviving spouse in other's estate, 34 A.L.R.2d 1020

Generally, equitable estoppel is applied to transactions where it would be unconscionable to allow a person to maintain a position inconsistent with one in which he or she accepted a benefit.[1] Such estoppel operates to prevent the party thus benefited from questioning the validity and effectiveness of the matter or transaction insofar as it imposes a liability or restriction upon him or her,[2] or, in other words, it precludes one who accepts the benefits from repudiating the accompanying or resulting obligation.[3] Parties cannot accept benefits under a contract fairly made and at the same time question its validity.[4] Estoppel also prevents a party from establishing a right or title in himself or herself, under one provision or implication of a deed or other instrument, by ignoring or contradicting another provision or implication that is destructive or fatally repugnant.[5] Similarly, the principle of quasi-estoppel precludes a party from asserting, to another's disadvantage, a right inconsistent with a position that it has previously taken; it applies when it would be unconscionable to allow a person to maintain a position inconsistent with one in which it accepted a benefit.[6] Thus, in an administrative appeal by a terminated public employee claiming a classified status,

the State may assert the defenses of waiver and estoppel if the employee has accepted appointment to a position designated as unclassified and has accepted the benefits of that unclassified position regardless of whether the employee's actual job duties fall within a classified status.[7] Similarly, pursuant to the doctrine of quasi-estoppel, an optioner who accepted a sum of money from the original optionee in consideration for an agreement to extend the term of the option contract is precluded from contending that the optionee failed to extend the expiration date because he or she was acting without the authority of his or her assignee.[8] Likewise, the doctrine of quasi-estoppel applies to preclude the successor operator of an oil unit from asserting that he was not bound by the terms of the joint operating agreement (JOA) governing the unit where the operator accepted the benefits, and the authorities of being the unit operator provided to him under the JOA.[9]

CUMULATIVE SUPPLEMENT

Cases:

A non-signatory can be bound under the direct-benefits estoppel doctrine that holds a non-signatory to a clause in a contract during litigation by knowingly seeking and obtaining direct benefits from the contract, or by seeking to enforce the terms of that contract or asserting claims that must be determined by reference to that contract. In re Lloyd's Register North America, Inc., 780 F.3d 283 (5th Cir. 2015).

In order to be estopped from asserting that his lack of signature on contract precludes enforcement of contract provision against him, non-signatory must have embraced a "direct benefit" of contract, i.e., a benefit that derives from asserting a term of contract, rather than an "indirect benefit," i.e., one that non-signatory will receive when another party acts in accordance with contract. In re Federal-Mogul Global, Inc., 526 B.R. 567 (D. Del. 2015).

The doctrine of "quasi-estoppel" is designed to prevent a party from reaping an unconscionable advantage, or from imposing an unconscionable disadvantage upon another, by asserting to the pleader's disadvantage a right that is inconsistent with one in which he accepted a benefit. Keybank Nat'l Ass'n v. PAL I, LLC, 311 P.3d 299 (Idaho 2013).

Where one with knowledge of material facts accepts or retains the benefits of the efforts or acts of another acting for him, he is deemed to have ratified the methods employed for he may not, though innocent himself, receive the benefits and at the same time disclaim responsibility for the measures by which they were acquired. Energy Home, Div. of Southern Energy Homes, Inc. v. Peay, 406 S.W.3d 828 (Ky. 2013).

[END OF SUPPLEMENT]

Footnotes

1 Kentucky Hosp. Ass'n Trust v. Chicago Ins. Co., 978 S.W.2d 754 (Ky. Ct. App. 1998); Netco, Inc. v. Dunn, 194 S.W.3d 353 (Mo. 2006), as modified on denial of reh'g, (June 30, 2006).
As to inconsistent positions, generally, see §§ 65 to 72.

2 Follett v. Taylor Bros., 77 Idaho 416, 294 P.2d 1088 (1956).

3 Follett v. Taylor Bros., 77 Idaho 416, 294 P.2d 1088 (1956); Daniel v. Goesl, 161 Tex. 490, 341 S.W.2d 892 (1960).

4 R.A.C. Holding, Inc. v. City of Syracuse, 258 A.D.2d 877, 684 N.Y.S.2d 740 (4th Dep't 1999).

5 Follett v. Taylor Bros., 77 Idaho 416, 294 P.2d 1088 (1956); Reed v. Skelly Oil Co., 227 S.W.2d 360 (Tex. Civ. App. Texarkana 1950), writ refused n.r.e.

6 Bristol-Myers Squibb Co. v. Barner, 964 S.W.2d 299 (Tex. App. Corpus Christi 1998).

7 Chubb v. Ohio Bur. of Workers' Comp., 81 Ohio St. 3d 275, 1998-Ohio-628, 690 N.E.2d 1267 (1998).

8 Rollingwood Trust No. 10 v. Schuhmann, 984 S.W.2d 312 (Tex. App. Austin 1998).

9 Reeder v. Wood County Energy L.L.C., 320 S.W.3d 433 (Tex. App. Tyler 2010), reh'g overruled, (Sept. 16, 2010) and petition for review filed, (Jan. 4, 2011).

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§ 61. Acceptance of benefits—Limitations on rule of estoppel

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Estoppel 92

A.L.R. Library

Constitutionality, construction, and application of statute respecting sale, assignment, or transfer of retail installment contracts, 10 A.L.R.2d 447

There are a number of limitations upon the general rule of estoppel by the acceptance of benefits, and the mere fact that something more or less beneficial has come to a person as a direct or indirect result of some contract, statute, or transaction does not necessarily always create an estoppel against him or her.[1] The rule must be applied to do equity and must not be applied in such a manner as to violate the principles of right and good conscience.[2]

One cannot be estopped by reason of accepting that which he or she is legally entitled to receive in any event,[3] and this is true even under the doctrine of quasi-estoppel.[4] Hence, estoppel against attacking or disputing a contract or transaction is not ordinarily created by the acceptance of a benefit purporting to be derived therefrom if in fact the party is entitled thereto regardless of whether the contract or transaction is sustained or overthrown.[5] The payment of a valid and undisputed past-due

debt cannot be the basis of an estoppel and is not a bar to the subsequent assertion of a claim for the balance,[6] especially where such acceptance is accompanied by an express reservation of rights or where it is manifest that the party does not intend to surrender them.[7] Of course, one cannot be estopped on this ground where he or she neither requested nor accepted any benefits.[8]

Before one's acceptance of a benefit can amount to an "estoppel," it must be shown that the benefit was accepted with knowledge of all the material facts.[9] Knowledge of the facts is essential to estoppel by acceptance of benefits;[10] thus, estoppel does not ordinarily arise from the acceptance of benefits where such acceptance is induced by excusable ignorance or mistake as to the facts involved.[11] Accordingly, an oil and gas lessors' acceptance of a shut-in royalty payment does not estop the lessors from claiming that the entire lease expired, in the absence of a showing that the lessors accepted the payment with knowledge of all the material facts, including the claim, by the assignee of the well that the payment of the shut-in royalty payment would effectively modify the lease by dividing the property encompassed therein into distinct parcels.[12]

Estoppel from acceptance of benefits may be extinguished in some cases by surrendering such benefits provided that the conditions are such that the parties can be placed in status quo.[13] Although one who receives and retains a gift under a deed, will, or other instrument is ordinarily estopped from contesting the validity of the instrument, he or she is not so estopped where he or she promptly returns the benefits, no prejudice results from the temporary receipt thereof, and the elements of laches are not present.[14]

Footnotes

1 Department of Financial Institutions v. General Finance Corp., 227 Ind. 373, 86 N.E.2d 444, 10 A.L.R.2d 436 (1949).

2 Rhodus v. Geatley, 347 Mo. 397, 147 S.W.2d 631 (1941).

3 Ford v. Yost, 299 Ky. 682, 186 S.W.2d 896, 162 A.L.R. 149 (1944).

4 Cook v. Ball, 144 F.2d 423 (C.C.A. 7th Cir. 1944).

5 Hubbard v. Beverly, 197 S.C. 476, 15 S.E.2d 740, 135 A.L.R. 1206 (1941).

6 Biel v. Godwin, 69 Nev. 189, 245 P.2d 997 (1952).

7 Bankers Trust Co. v. Pacific Employers Insurance Co., 282 F.2d 106 (9th Cir. 1960).

8 Workman v. Anderson, 297 S.W.2d 519 (Mo. 1957).

9 Sun Operating Ltd. Partnership v. Holt, 984 S.W.2d 277 (Tex. App. Amarillo 1998).

10 Fish v. Berzel, 101 N.W.2d 548 (N.D. 1960).
As to knowledge of facts and rights, generally, see § 44.

11 Cook v. Commercial Cas. Ins. Co., 160 F.2d 490 (C.C.A. 4th Cir. 1947).

12 Sun Operating Ltd. Partnership v. Holt, 984 S.W.2d 277 (Tex. App. Amarillo 1998).

13 Barret's Ex'r v. Barret, 166 Ky. 411, 179 S.W. 396 (1915) (overruled in part on other grounds by, Harlan v. Citizens Nat. Bank of Danville, 251 S.W.2d 284, 69 A.L.R.2d 1280 (Ky. 1952)).

14 Barnett Nat. Bank of Jacksonville v. Murrey, 49 So. 2d 535, 21 A.L.R.2d 1452 (Fla. 1950).

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e. Negligence; Apparent Title or Ownership

§ 62. Generally; application of "two innocent persons" principle

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Estoppel 96

Estoppel may arise from the culpable negligence of one party by which another has been misled.[1] If one who by his or her acts or representations through culpable negligence induces another to believe certain facts to exist and the latter, not knowing the facts, acts on such belief to his or her substantial prejudice, the former is, in equity, estopped from denying the existence of such fact.[2]

When two innocent parties are injured by a third, either by negligence or fraud, the one who made the loss possible[3] or who could have prevented it must bear legal responsibility.[4] Thus, as between certain mortgagees and the grantor, the grantor who created title in the mortgagor had to bear the loss that occurred when the grantor, in order to raise investment funds for the mortgagor's business, deeded her home to the mortgagor who in turn obtained mortgage loans on the property and then used the proceeds of such loans for his own purposes, notwithstanding that an officer for the corporate mortgagees observed that the home, in which the grantor continued to reside, was occupied but failed to make inquiry, and accordingly, the mortgagees were entitled to foreclosure.[5]

Footnotes

1 Blue Grass Taxi Garage Co. v. Shepherd, 304 Ky. 390, 200 S.W.2d 936 (1947); Hauck v. Crawford, 75 S.D. 202, 62 N.W.2d 92 (1953).

2 Whitacre Partnership v. Biosignia, Inc., 358 N.C. 1, 591 S.E.2d 870 (2004); Knori v. State, ex rel., Dept. of Health, Office of Medicaid, 2005 WY 48, 109 P.3d 905 (Wyo. 2005).

3 Florida Auto. Finance Corp. v. Reyes, 710 So. 2d 216 (Fla. Dist. Ct. App. 3d Dist. 1998); Thomas v. Fields, 29 Ohio Op. 2d 286, 94 Ohio L. Abs. 48, 196 N.E.2d 103 (Ct. App. 8th Dist. Cuyahoga County 1964).

4 Grenell v. Scott, 134 So. 2d 866 (Fla. Dist. Ct. App. 2d Dist. 1961).

5 American Metropolitan Mortg., Inc. v. Maricone, 423 So. 2d 396 (Fla. Dist. Ct. App. 2d Dist. 1982).

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e. Negligence; Apparent Title or Ownership

§ 63. Apparent title to or power of disposition of personal property

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Estoppel 96

A.L.R. Library

Title to goods, as between purchaser from, and one who entrusted them to, auctioneer, 36 A.L.R.2d 1362

Although mere possession and control of personal property are not ordinarily sufficient to estop the real owner from asserting his or her title against a person who has dealt with the one in possession on the faith of his or her apparent ownership,[1] slight additional circumstances may turn the scale against the owner and estop him or her from asserting title against one who has purchased the property in good faith.[2] Thus, an estoppel will arise against the real owner where he or she clothes the person assuming to dispose of the property with the apparent title to it or with apparent authority to dispose of it and when the person setting up the estoppel acts and parts with value or extends credit on the faith of such apparent ownership or authority.[3] Accordingly, in an action by the owner of a valuable painting to recover the painting or its value, the defense of equitable estoppel, which provides that an owner may be estopped from setting up his or her own title and the lack of title in the vendor as against a bona fide purchaser for value, where the owner has clothed the vendor with possession and other indicia of title, is not available to an art dealer who purchased the painting from a delicatessen employee who was not the owner and had no authority

to dispose of it although he had obtained the painting from a person who rightfully had possession of it pursuant to an agreement with the true owner since the owner had consigned the painting for display only and conferred no other indicia of ownership.[4]

Where the owner of collateral allows another to appear as the owner or to dispose of the collateral, such that a third party is led into dealing with the apparent owner as though he or she were the actual owner, then the owner will be estopped from asserting that the apparent owner did not have rights in the collateral.[5]

However, estoppel applies only where the owner of property knowingly cloaks another with indicia of ownership, and it does not apply where the indicia of ownership is secured by theft, forgery, or other criminal act.[6]

Footnotes

1 Midwestern Machinery Co. v. Parsons, 385 S.W.2d 224 (Mo. Ct. App. 1964); Zendman v. Harry Winston, Inc., 305 N.Y. 180, 111 N.E.2d 871, 36 A.L.R.2d 1355 (1953).

2 Zendman v. Harry Winston, Inc., 305 N.Y. 180, 111 N.E.2d 871, 36 A.L.R.2d 1355 (1953).

3 Mori v. Chicago Nat. Bank, 3 Ill. App. 2d 49, 120 N.E.2d 567 (1st Dist. 1954); Central Nat. Bank of Richmond, Va. v. Rich, 256 N.C. 324, 123 S.E.2d 811 (1962).

4 Porter v. Wertz, 68 A.D.2d 141, 416 N.Y.S.2d 254, 26 U.C.C. Rep. Serv. 876 (1st Dep't 1979), judgment aff'd, 53 N.Y.2d 696, 439 N.Y.S.2d 105, 421 N.E.2d 500, 30 U.C.C. Rep. Serv. 1582 (1981).

5 Continental Grain Co. v. Brandenburg, 1998 SD 118, 587 N.W.2d 196, 37 U.C.C. Rep. Serv. 2d 779 (S.D. 1998).

6 First Southern Ins. Co. v. Ocean State Bank, 562 So. 2d 798, 11 U.C.C. Rep. Serv. 2d 1255 (Fla. Dist. Ct. App. 1st Dist. 1990).

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Part One. Estoppel

III. Equitable Estoppel or Estoppel in Pais

B. Elements, Requisites, and Grounds

2. As Related to Party to Be Estopped

e. Negligence; Apparent Title or Ownership

§ 64. Estoppel certificate

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Estoppel 96

Forms

Am. Jur. Legal Forms 2d §§ 102:4, 102:5 (Estoppel certificate)

In a mortgage-foreclosure action, an estoppel certificate issued to a plaintiff by a debtor does not resurrect or revitalize the mortgage that had been extinguished by a tax sale since such certificate bars the person who executes it and anyone in privity of estate with him or her from interposing an otherwise valid defense to the mortgage and where there was no assertion that a defendant's predecessor in interest was in privity of estate with the debtor nor did the plaintiff submit facts to show that the effect of the estoppel certificate was to create a new mortgage.[1]

CUMULATIVE SUPPLEMENT

Cases:

The execution of an estoppel certificate can create an estoppel effect against future claims for damages. Fundus America (Atlanta) Ltd. Partnership v. RHOC Consolidation, LLC, 313 Ga. App. 118, 720 S.E.2d 176 (2011).

[END OF SUPPLEMENT]

Footnotes

1 Central Federal Sav. F.S.B. v. Laurels Sullivan County Estates Corp., 145 A.D.2d 1, 537 N.Y.S.2d 642 (3d Dep't 1989).

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2. As Related to Party to Be Estopped

f. Inconsistent Positions

§ 65. Generally

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Estoppel 63

Generally, a party will not be permitted to maintain inconsistent positions or to take a position in regard to a matter that is directly contrary to, or inconsistent with, one previously assumed by him or her,[1] at least where he or she had, or was chargeable with, full knowledge of the facts.[2] This doctrine against inconsistent positions is much broader than judicial estoppel in that judicial estoppel prohibits a party from manipulating the courts through inconsistent positions to gain an advantage while the doctrine against inconsistent positions may also apply to positions taken outside litigation.[3] Also, the doctrine of detrimental reliance is designed to prevent injustice by barring a party from taking a position contrary to his or her prior acts, admissions, representations, or silence.[4] Equitable estoppel is generally understood to prevent one party from taking a position that is inconsistent with an earlier action that places the other party at a disadvantage;[5] it bars a speaker from taking a position inconsistent with a prior statement when another person has reasonably and detrimentally relied on the earlier statement.[6] Under the doctrine of equitable estoppel, the fraud is the inconsistent position subsequently taken rather than the original conduct; it is the former, rather than the latter, that operates to the injury of the other party.[7] Similarly, under the principles of quasi-estoppel, which are somewhat analogous to estoppel, the conscience of the court is repelled by the assertion of rights inconsistent with a litigant's past conduct.[8] Also, the doctrine of quasi-estoppel may be properly invoked against a person asserting a claim inconsistent with a position previously taken by him or her with knowledge of the facts and his or her rights, to the detriment of the person seeking application of the doctrine.[9] To prevail on a quasi-estoppel theory, the claimant must show: (1) that the offending party took a different position from his or her original position; and (2) that either the offending party gained an advantage or caused a disadvantage to the other party, the other party was induced to change positions, or it would be

unconscionable to permit the offending party to maintain an inconsistent position from one that he or she has already derived a benefit or acquiesced in.[10] For the quasi-estoppel doctrine to apply and prevent a party from successfully asserting a position inconsistent with a previously taken position, it must be unconscionable to allow the party to be estopped from maintaining an inconsistent position; unconscionability must be shown in addition to the change of position as a change in position does not by itself establish unconscionability.[11]

CUMULATIVE SUPPLEMENT

Cases:

Statements that Chapter 11 debtor, a public facilities corporation formed by village to obtain financing for and construct a hotel and convention center, had previously made before taxing authorities in proceeding to determine tax-exempt status of its bonds were not binding and did not prevent it, at hearing on motion to dismiss its Chapter 11 case on theory that it was a "governmental unit" ineligible for Chapter 11 relief, from taking position that it was not "governmental unit"; debtor, in making statements before taxing authorities, was not acknowledging that it was "governmental unit" ineligible for relief Chapter 11 of the Bankruptcy Code, but was making statements for completely different purpose of asserting that its bonds were tax exempt under completely different legislative scheme. 11 U.S.C.A. §§ 101(27, 41), 109(d). In re Lombard Public Facilities Corporation, 579 B.R. 493 (Bankr. N.D. Ill. 2017).

[END OF SUPPLEMENT]

Footnotes

1 Chautauqua County Federation of Sportsmens Club, Inc. v. Caflisch, 15 A.D.2d 260, 222 N.Y.S.2d 835 (4th Dep't 1962); Obion County v. McKinnis, 211 Tenn. 183, 364 S.W.2d 356 (1962); Caldwell v. Anschutz Drilling Co., 13 Utah 2d 177, 369 P.2d 964 (1962).

2 Chautauqua County Federation of Sportsmens Club, Inc. v. Caflisch, 15 A.D.2d 260, 222 N.Y.S.2d 835 (4th Dep't 1962); Obion County v. McKinnis, 211 Tenn. 183, 364 S.W.2d 356 (1962).
As to knowledge of facts as an element of estoppel, generally, see § 44.

3 Dupwe v. Wallace, 355 Ark. 521, 140 S.W.3d 464 (2004).

4 Suire v. Lafayette City-Parish Consol. Government, 907 So. 2d 37 (La. 2005).

5 Strong v. State ex rel. The Oklahoma Police Pension and Retirement Bd., 2005 OK 45, 115 P.3d 889 (Okla. 2005).

6 Sowinski v. Walker, 198 P.3d 1134 (Alaska 2008).

7 Friedland v. Gales, 131 N.C. App. 802, 509 S.E.2d 793 (1998).

8 Graybar Elec. Co. v. McClave, 91 Ariz. 223, 371 P.2d 350, 3 A.L.R.3d 750 (1962).

9 City of Eagle v. Idaho Dept. of Water Resources, 150 Idaho 449, 247 P.3d 1037 (2011).

10 Mortensen v. Stewart Title Guar. Co., 149 Idaho 437, 235 P.3d 387 (2010).

11 Birdwood Subdivision Homeowners' Ass'n, Inc. v. Bulotti Const., Inc., 145 Idaho 17, 175 P.3d 179 (2007).

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III. Equitable Estoppel or Estoppel in Pais

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f. Inconsistent Positions

§ 66. In actions or proceedings; limitations on, or qualifications of, rule

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West's Key Number Digest

West's Key Number Digest, Estoppel 63

The rule that a party will not be allowed to maintain inconsistent positions applies in respect to positions in judicial actions and proceedings.[1] Equitable estoppel focuses on the relationship between the parties to the prior litigation and requires a demonstration that a party claiming equitable estoppel relied to its detriment on a position maintained by its adversary in an earlier proceeding.[2]

When a litigant chooses to ignore or act in reckless disregard of the rules and procedures set out for the orderly administration of the judicial process, he or she cannot then be heard to complain when he or she receives no relief under its rules.[3]

A number of limitations upon, or qualifications of, the rule against assuming inconsistent positions in judicial proceedings have been laid down.[4] The view has been expressed in many cases that, to give rise to an estoppel, the positions must be not merely different but so inconsistent that one necessarily excludes the other.[5] Estoppel against such a change of position is dependent upon success in maintaining the original claim.[6] While it is widely held that the rule that the taking of a position in one judicial proceeding precludes the taking of an inconsistent position in a subsequent one, this rule does not apply ordinarily to suits in which the issues and the parties are not the same.[7]

A litigant who has taken an erroneous position on a question of law is ordinarily not estopped from later taking the correct position provided that his or her adversary has suffered no harm or prejudice by reason of the change.[8]

Footnotes

1 Jones v. Central of Georgia Ry. Co., 331 F.2d 649 (5th Cir. 1964); In re Chicago, B. & Q.R. Co., 170 Neb. 77, 101 N.W.2d 856 (1960).

2 Chandler v. Samford University, 35 F. Supp. 2d 861 (N.D. Ala. 1999).

3 Stradford v. Caudillo, 972 S.W.2d 483 (Mo. Ct. App. W.D. 1998).

4 Coleman v. Southern Pac. Co., 141 Cal. App. 2d 121, 296 P.2d 386 (1st Dist. 1956); Barnes v. Clark, 1961 OK 200, 364 P.2d 693 (Okla. 1961).

5 Associated Creditors' Agency v. Wong, 216 Cal. App. 2d 61, 30 Cal. Rptr. 705 (1st Dist. 1963); Markley v. Markley, 31 Wash. 2d 605, 198 P.2d 486 (1948).

6 Bolles v. Boatmen's Nat. Bank of St. Louis, 363 Mo. 949, 255 S.W.2d 725 (1953).

7 Bolles v. Boatmen's Nat. Bank of St. Louis, 363 Mo. 949, 255 S.W.2d 725 (1953); Ferebee v. Hungate, 192 Va. 32, 63 S.E.2d 761 (1951).

8 Pittston Co. v. O'Hara, 191 Va. 886, 63 S.E.2d 34 (1951).

End of Document

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§ 67. Judicial estoppel

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A.L.R. Library

Judicial Estoppel of Subsequent Action Based on Statements, Positions, or Omissions as to Claim or Interest in Bankruptcy Proceeding, 85 A.L.R.5th 353

Judicial estoppel is a subset of the doctrine of quasi-estoppel, which has its basis in election, waiver, acquiescence, or an acceptance of benefits.[1] The fundamental concept of judicial estoppel is that a party in a judicial proceeding is barred from denying or contradicting sworn statements made therein.[2] Under the doctrine of judicial estoppel, where a party assumes a certain position in a legal proceeding, and succeeds in maintaining that position, he or she may not thereafter, simply because his or her interests have changed, assume a contrary position, especially if it would be to the prejudice of the party who has acquiesced in the position formerly taken by him or her.[3] Where the doctrine of judicial estoppel applies, a party who has made a sworn statement in a prior proceeding is barred from maintaining a contrary position in a subsequent proceeding.[4]

Judicial estoppel is a judge-made doctrine that seeks to prevent a litigant from asserting a position inconsistent with, conflicting with, or is contrary to one that he or she has previously asserted in the same or in a previous proceeding.[5] Judicial estoppel is an equitable doctrine that is used to prevent litigants from taking totally inconsistent positions in separate judicial, including quasi-judicial, proceedings.[6] It precludes a party from gaining an advantage by taking one position and then seeking a second advantage by taking an incompatible position.[7] The doctrine of judicial estoppel prevents a party from assuming successive positions in the course of a suit or series of suits with regard to the same fact or set of facts if those facts are inconsistent or mutually contradictory.[8] Under this doctrine, a party cannot assume a position at one stage of a proceeding and then take a contrary stand later in the same litigation.[9]

The doctrine of judicial estoppel is designed to prevent litigants and their counsel from playing fast and loose with the courts[10] and to protect the integrity of the judicial process.[11] Absent success in a prior proceeding, a party's later inconsistent position introduces no risk of inconsistent court determinations, and thus poses little threat to judicial integrity, for purposes of applying the doctrine of judicial estoppel.[12] The judicial estoppel doctrine is equitable and is intended to protect the courts from being manipulated by chameleonic litigants who seek to prevail, twice, on opposite theories.[13] The purpose of the doctrine is to reduce fraud in the legal process by forcing a modicum of consistency on the repeating litigant.[14]

The doctrine of judicial estoppel does not require reliance before a party may invoke it[15] although there is authority that requires reliance by the court.[16]

Under the doctrine of judicial estoppel, a party, but not the court, is bound by the party's assertions.[17]

In some jurisdictions, the doctrine of judicial estoppel does not apply to prevent parties from asserting a position contrary to that taken in a prior proceeding.[18]

CUMULATIVE SUPPLEMENT

Cases:

Where a party assumes a certain position in a legal proceeding, and succeeds in maintaining that position, he may not thereafter, simply because his interests have changed, assume a contrary position. Microsoft Corp. v. Baker, 137 S. Ct. 1702 (2017).

Judicial estoppel is invoked by a court at its discretion, and is designed to protect the integrity of the judicial process by prohibiting parties from deliberately changing positions according to the exigencies of the moment. U.S. v. Apple, Inc., 791 F.3d 290 (2d Cir. 2015).

Former employee of university was judicially estopped from asserting his employment discrimination claim against his former employer due to his failure to disclose the existence of the claim or his employment with and earnings from university in his bankruptcy proceeding; employee only corrected his omissions in bankruptcy proceeding after they had been brought to attention of district and bankruptcy courts by other parties, and employee's omissions, which included falsely stating that he had $0 in income and failing to disclose his employment even in response to questions about part-time work, were too blatant for employee to have fairly relied on alleged advice of counsel. Newman v. University of Dayton, 751 Fed. Appx. 809 (6th Cir. 2018).

Judicial estoppel is an equitable doctrine, and using it to land another blow on the victims of bankruptcy fraud is not an equitable application. Copelan v. Techtronics Industries Co., Ltd., 95 F. Supp. 3d 1230 (S.D. Cal. 2015).

Relevant inquiry, in deciding whether debtor's failure to disclose asset is such as to judicially estop him, is debtor's intent at the time of non-disclosure. Taylor v. Novartis Pharmaceuticals Corporation, 506 B.R. 157 (S.D. Fla. 2013).

Judicial estoppel "raises the costs of lying" about disclosures in bankruptcy proceedings by making litigants choose one position irrevocably, and is designed to prevent the perversion of the judicial process. Jones v. National Council of Young Men's Christian Associations of the United States of America, 48 F. Supp. 3d 1054 (N.D. Ill. 2014).

Judicial estoppel may bar employment-related claims where the plaintiff has failed to disclose as an asset in a bankruptcy proceeding either the existence of such a claim or income derived from the employment relationship at issue. Galligan v. Detroit Free Press, 436 F. Supp. 3d 980 (E.D. Mich. 2020).

Alleged judicial admission made by defendants' attorney, in action alleging breach of a partnership created for purpose of developing a social-networking website, did not judicially estop defendants from asserting the trace forgery theory set forth in the supplemental expert's report; district court never adopted the attorney's comments as defendants' position on the issue of whether the signature appearing on second page of the purported contract was authentic, there was no indication that defendants benefited from the comments, and no action in the case established judicial adoption. Ceglia v. Zuckerberg, 287 F.R.D. 152 (W.D. N.Y. 2012).

Utility company was judicially estopped, on motion for sanctions for spoliation in negligence and breach of contract action against pipeline operators, from taking position that it did not anticipate litigation against pipeline operator, as would trigger duty to preserve relevant evidence, in early August 2007, because operator was cooperating with plant at that point to find cause of gas contamination; in resisting motion to compel based on work product protection, utility company argued that e-mails and other documents identified as work product beginning on August 2, 2007 were prepared "in anticipation of litigation" and related to collection of information necessary to assess, develop, and establish company's claims and/or to identify and analyze anticipated defenses. PacifiCorp v. Northwest Pipeline GP, 879 F. Supp. 2d 1171 (D. Or. 2012).

Doctrine of judicial estoppel applies in situations involving intentional contradictions, not simple error or inadvertence. In re Kimrow, Inc., 534 B.R. 219 (Bankr. M.D. Ga. 2015).

Doctrine of inconsistent positions did not bar city from asserting, in class action lawsuit challenging its use of tax revenue collected pursuant to a temporary sales and use tax, that its use of any revenue in excess of the amount needed to pay city's outstanding liability for federal payroll and employment taxes was consistent with the ballot title pursuant to which the tax was authorized; if city took an official position prior to the litigation, that position was reflected in its enabling ordinance authorizing the tax, the pertinent portion of which was identical to the language of the ballot title. Carlock v. City of Blytheville, 2019 Ark. 302, 586 S.W.3d 155 (2019).

Prior proceeding wherein designated port agent of the Board of Pilot Commissioners for the Bays of San Francisco, San Pablo and Suisun successfully contended that he was a public official when assigning pilots to vessels and thus was shielded from liability under 11th Amendment judicially estopped port agent from asserting that he was not a public official for purposes of the disclosure obligations of the California Public Records Act (CPRA) in maintaining logs of pilot assignments to vessels. U.S. Const. Amend. 11; Cal. Gov't Code § 6250 et seq. Board of Pilot Commissioners for the Bays of San Francisco, San Pablo and Suisun v. Superior Court, 218 Cal. App. 4th 577, 160 Cal. Rptr. 3d 285 (1st Dist. 2013).

Where the underlying civil case involves allegations of government abuse, at the very least, a trial court ought to consider and weigh the countervailing state interest in the integrity and accountability of local government and the windfall for alleged government bad actors before applying judicial estoppel, including the potential disservice to taxpayers if the merits of the claim are never touched; to do otherwise is to value the integrity of judicial proceedings as infinitely more important than the integrity

of the executive and legislative branches of state and local government. (Per Peterson, J., with three justices concurring, and two justices concurring separately.) Fulton County v. Ward-Poag, 849 S.E.2d 465 (Ga. 2020).

Parties to stipulations and agreements entered into in the course of judicial proceedings are estopped from taking positions inconsistent therewith, and no litigant will be heard to complain unless it be made plainly to appear that the consent of the complaining party was obtained by fraud or mistake. Surette v. Henry County Bd. of Tax Assessors, 332 Ga. App. 457, 773 S.E.2d 416 (2015).

The judicial estoppel doctrine is designed to protect the judicial system and applies where intentional self-contradiction is being used as a means of obtaining unfair advantage in a forum provided for suitors seeking justice. Clark v. Neese, 131 So. 3d 556 (Miss. 2013).

Employee was judicially estopped from asserting FELA claim against railroad on basis of statements he failed to make in prior bankruptcy proceeding; employee never disclosed to the bankruptcy court the existence of his cause of action against railroad, he did not show that his conduct in failing to list his FELA claims was inadvertent, employee violated his statutory duty to disclose his lawsuit as an asset and then obtained a complete discharge from all obligations to his creditors, and he did not explain his breach of his statutory obligations to obtain a discharge. Sterling Act, § 1 et seq., 45 U.S.C.A. § 51 et seq.; 11 U.S.C.A. § 521; V.A.M.R. 74.04. Strable v. Union Pacific R. Co., 396 S.W.3d 417 (Mo. Ct. App. E.D. 2013).

The elements of judicial estoppel are: (1) the party being estopped must have knowledge of the facts at the time the original position is taken; (2) the party must have succeeded in maintaining the original position; (3) the position presently taken must be actually inconsistent with the original position; and (4) the original position must have misled the adverse party so that allowing the estopped party to change its position would injuriously affect the adverse party. LeMond v. Yellowstone Development, LLC, 2014 MT 181, 375 Mont. 402, 336 P.3d 345 (2014).

A party may not benefit from asserting one position and later assert a contrary position to the detriment of its opponent at trial. Bilesky v. Shopko Stores Operating Co., LLC, 2014 MT 300, 338 P.3d 76 (Mont. 2014).

Wife was presumed to have read and understood contents of joint tax returns, which she signed under penalty of perjury, such that wife represented that charitable contributions were made in both parties' names as a married couple, and thus wife was judicially estopped from claiming in divorce action that donations were made without her consent and were marital waste; charity receiving contributions was a bona fide nonprofit organization, marital estate received benefit from contributions in the form of tax deductions, and wife had unfettered access to complete returns from parties' accountant. Melvin v. Melvin, 154 A.D.3d 596, 63 N.Y.S.3d 48 (1st Dep't 2017).

Putative wife's prior sworn statement in family court, admitting that she knew she and father of their expected child could not be legally married and that she was aware that he was married to another woman, judicially estopped her from taking wholly contrary position in supreme court in which she sought divorce and requested temporary custody of child, and thus, parties did not have justified expectation that they were validly married in Islamic religious ceremony but without obtaining marriage license. Hasna J. v. David N., 53 Misc. 3d 1142, 39 N.Y.S.3d 701 (Sup 2016).

Judicial estoppel applies only to assertions of fact, not law, while the doctrine against approbation and reprobation can, and often does, involve legal positions taken by a party. Wooten v. Bank of America, N.A., 777 S.E.2d 848 (Va. 2015).

Judicial estoppel is not directed to the relationship between the parties, but rather is intended to protect the judiciary as an institution. State v. Ryan, 2012 WI 16, 338 Wis. 2d 695, 809 N.W.2d 37 (2012).

[END OF SUPPLEMENT]

Footnotes

1 Roxas v. Marcos, 89 Haw. 91, 969 P.2d 1209 (1998).

2 Franklin v. Thompson, 722 So. 2d 688 (Miss. 1998).

3 Zedner v. U.S., 547 U.S. 489, 126 S. Ct. 1976, 164 L. Ed. 2d 749, 46 A.L.R. Fed. 2d 649 (2006); New Hampshire v. Maine, 532 U.S. 742, 121 S. Ct. 1808, 149 L. Ed. 2d 968 (2001).

4 Horizon Offshore Contractors, Inc. v. Aon Risk Services of Texas, Inc., 283 S.W.3d 53 (Tex. App. Houston 14th Dist. 2009), review denied, (Sept. 25, 2009).

5 U.S. v. Krankel, 164 F.3d 1046, 50 Fed. R. Evid. Serv. 1223 (7th Cir. 1998); Chandler v. Samford University, 35 F. Supp. 2d 861 (N.D. Ala. 1999); Haley v. Dow Lewis Motors, Inc., 72 Cal. App. 4th 497, 85 Cal. Rptr. 2d 352 (3d Dist. 1999); Farmers High Line Canal and Reservoir Co. v. City of Golden, 975 P.2d 189 (Colo. 1999); GEICO Ins. Co. v. Rowell, 705 N.E.2d 476 (Ind. Ct. App. 1999); City of New York v. Black Garter, 179 Misc. 2d 597, 685 N.Y.S.2d 606 (Sup 1999), aff'd, 273 A.D.2d 188, 709 N.Y.S.2d 110 (2d Dep't 2000); Greer-Burger v. Temesi, 116 Ohio St. 3d 324, 2007-Ohio-6442, 879 N.E.2d 174 (2007); Widener University, Inc. v. Estate of Boettner, 1999 PA Super 40, 726 A.2d 1059 (1999); Steffan v. Steffan, 29 S.W.3d 627 (Tex. App. Houston 14th Dist. 2000); In re Estates of Smaldino, 151 Wash. App. 356, 212 P.3d 579 (Div. 1 2009), review denied, 168 Wash. 2d 1033, 230 P.3d 1061 (2010); Ottema v. State ex rel. Wyoming Worker's Compensation Div., 968 P.2d 41 (Wyo. 1998).

A driver's application for a writ of mandamus requiring the Department of Transportation to provide a hearing on the revocation of driving privileges judicially estopped the driver from assuming a contrary legal position on appeal that the proper remedy was dismissal of the action and reinstatement of driving privileges because the Department's hearing was untimely more than 30 days after the offense. Dunn v. North Dakota Dept. of Transp., 2010 ND 41, 779 N.W.2d 628 (N.D. 2010).

6 Carter v. State, 980 So. 2d 473 (Fla. 2008).

7 MW Erectors, Inc. v. Niederhauser Ornamental and Metal Works Co., Inc., 36 Cal. 4th 412, 30 Cal. Rptr. 3d 755, 115 P.3d 41 (2005).

8 Virginia Elec. and Power Co. v. Norfolk Southern Ry. Co., 278 Va. 444, 683 S.E.2d 517 (2009).

9 Pursue Energy Corp. v. Mississippi State Tax Com'n, 968 So. 2d 368 (Miss. 2007).

10 Wilson v. Chrysler Corp., 172 F.3d 500 (7th Cir. 1999); Chandler v. Samford University, 35 F. Supp. 2d 861 (N.D. Ala. 1999); Donato v. Metropolitan Life Ins. Co., 230 B.R. 418 (N.D. Cal. 1999); Stairmaster Sports/Medical Products, Inc. v. Groupe Procycle, Inc., 25 F. Supp. 2d 270 (D. Del. 1998), decision aff'd, 232 F.3d 909 (Fed. Cir. 2000); In re Hill, 332 B.R. 835 (Bankr. M.D. Fla. 2005); Haley v. Dow Lewis Motors, Inc., 72 Cal. App. 4th 497, 85 Cal. Rptr. 2d 352 (3d Dist. 1999); GEICO Ins. Co. v. Rowell, 705 N.E.2d 476 (Ind. Ct. App. 1999).

11 New Hampshire v. Maine, 532 U.S. 742, 121 S. Ct. 1808, 149 L. Ed. 2d 968 (2001); Chandler v. Samford University, 35 F. Supp. 2d 861 (N.D. Ala. 1999); Donato v. Metropolitan Life Ins. Co., 230 B.R. 418 (N.D. Cal. 1999); Drain v. Betz Laboratories, Inc., 69 Cal. App. 4th 950, 81 Cal. Rptr. 2d 864 (2d Dist. 1999); Flagg Energy Development Corp. v. General Motors Corp., 235 Ga. App. 540, 509 S.E.2d 399 (1998); Paixao v. Paixao, 429 Mass. 307, 708 N.E.2d 91 (1999).

The dual goals of the judicial estoppel doctrine are to maintain the integrity of the judicial system and to protect the parties from the opponents' unfair strategies. MW Erectors, Inc. v. Niederhauser Ornamental and Metal Works Co., Inc., 36 Cal. 4th 412, 30 Cal. Rptr. 3d 755, 115 P.3d 41 (2005).

12 New Hampshire v. Maine, 532 U.S. 742, 121 S. Ct. 1808, 149 L. Ed. 2d 968 (2001).

13 Wilson v. Chrysler Corp., 172 F.3d 500 (7th Cir. 1999).

14 Davis v. B & S, Inc., 38 F. Supp. 2d 707 (N.D. Ind. 1998).

15 In re Chambers Development Co., Inc., 148 F.3d 214 (3d Cir. 1998); Drain v. Betz Laboratories, Inc., 69 Cal. App. 4th 950, 81 Cal. Rptr. 2d 864 (2d Dist. 1999).

16 Ensley v. Cody Resources, Inc., 171 F.3d 315 (5th Cir. 1999).

17 Bankruptcy Estate of Lake Geneva Sugar Shack, Inc. v. General Star Indem. Co., 32 F. Supp. 2d 1059 (E.D. Wis. 1999), judgment rev'd on other grounds, 200 F.3d 479 (7th Cir. 2000).

18 In re Porter McLeod, Inc., 231 B.R. 786 (D. Colo. 1999).

A contractor was not judicially estopped from seeking attorney's fees under the contract even though it took the position during the trial that upon the city's breach, the contract no longer applied. City of Gillette v. Hladky Const., Inc., 2008 WY 134, 196 P.3d 184 (Wyo. 2008).

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§ 68. Judicial estoppel—Limitations and application

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Judicial estoppel is an equitable concept[1] with some vagueness in its application,[2] and its application is within the sound discretion of the court.[3] Because the rule is intended to prevent an improper use of the judicial machinery, judicial estoppel is an equitable doctrine invoked by a court at its discretion.[4]

Although the estoppel doctrine is equitable and thus cannot be reduced to a precise formula or test, several factors typically inform the decision whether to apply the doctrine in a particular case: first, a party's later position must be clearly inconsistent with its earlier position; second, the courts regularly inquire whether the party has succeeded in persuading a court to accept that party's earlier position; and, third, whether the party seeking to assert an inconsistent position would derive an unfair advantage or impose an unfair detriment on the opposing party if not estopped.[5] These core factors that guide a trial court in determining whether to apply the judicial estoppel doctrine are not an exhaustive formula, and additional considerations may guide a court's decision.[6]

More specifically, the following five circumstances are often required in order that the doctrine of judicial estoppel may apply: (1) the two inconsistent positions must be taken by the same party or parties in privity with each other[7] although it has been held that the identity of the parties is not necessarily required for the application of judicial estoppel;[8] (2) the positions must be taken in the same or related proceedings involving the same parties or parties in privity with each other;[9] (3) the party taking the positions must have been successful in maintaining the first position[10] and must have received some benefit[11] or unfair

advantage,[12] or the opposing party is prejudiced by the changed argument,[13] although there is also authority holding that no benefit needs to be obtained;[14] (4) the inconsistency must be part of an intentional effort to mislead the court[15] that the courts should not tolerate,[16] although the doctrine of judicial estoppel does not apply when the prior position was taken because of inadvertence or mistake,[17] or is an innocent inconsistency or apparent inconsistency that is actually reconcilable;[18] and (5) the two positions must be totally inconsistent—that is, the truth of one position must necessarily preclude the truth of the other position,[19] at least where the party had, or was chargeable with, full knowledge of the facts.[20]

Judicial estoppel must be applied with caution and in the narrowest of circumstances[21] so as to avoid impinging on the truth-seeking function of the court because the doctrine precludes a contradictory position without examining the truth of either statement.[22] In determining whether to apply the doctrine of judicial estoppel, the broad interests of public policy may make it important to allow a change of positions that might seem inappropriate as a matter of merely private interests.[23]

Judicial estoppel is a concept to be applied with restraint in egregious cases only and with clear regard for the facts of the particular case.[24] The circumstances in which the doctrine of judicial estoppel may be invoked are not reducible to any formulation of principle.[25]

The doctrine of judicial estoppel can apply to quasi-judicial administrative actions[26] and is also applicable when a party seeks to repudiate a favorable order from an administrative proceeding in a subsequent judicial proceeding.[27]

Ordinarily, the doctrine of estoppel, or that part of it that precludes inconsistent positions in judicial proceedings, is not applicable to states.[28] However, there is authority holding that judicial estoppel, unlike equitable estoppel, may be imposed against the government.[29]

The doctrine of judicial estoppel applies to oral marital separation agreements,[30] and the courts also may generally apply judicial estoppel to debtors who fail to list a potential legal claim among their assets during bankruptcy proceedings and then later pursue the claims after the bankruptcy discharge.[31]

Judicial estoppel is not limited to oral testimony but applies with equal force to any sworn statement, whether oral or written, made in the course of a judicial proceeding.[32] However, the doctrine of judicial estoppel has been held inapplicable to allegedly inconsistent statements made by a plaintiff in her amended complaint.[33]

Judicial estoppel bars changes in factual positions[34] and does not extend to inconsistent opinions or legal positions.[35] Judicial estoppel is inappropriate when a party is merely changing its position in response to a change in the law.[36]

Practice Tip:

Judicial estoppel is procedural in nature, and the rule of lex fori will apply.[37]

CUMULATIVE SUPPLEMENT

Cases:

Judicial estoppel generally prevents a party who has assumed a certain position in a legal or administrative proceeding from thereafter assuming a contrary position, and it applies to sworn statements made to administrative agencies, such as the Social Security Administration in Social Security Disability Insurance (SSDI) proceedings; however, the mere fact that a plaintiff files for social security benefits does not create a presumption that she is unable to perform the essential functions of her job. Lewis v. New York City Transit Authority, 12 F. Supp. 3d 418 (E.D. N.Y. 2014).

The factors that inform a court's decision with regard to judicial estoppel are not inflexible prerequisites or an exhaustive formula; additional considerations may inform the doctrine's application in specific factual contexts, but it should be applied both narrowly and cautiously. Boardwalk Apartments, L.C. v. State Auto Property and Cas. Ins. Co., 11 F. Supp. 3d 1062 (D. Kan. 2014).

District Court abused its discretion in invoking judicial estoppel to dismiss personal injury action brought by estate of litigant who died of mesothelioma against multiple corporations, alleging that his mesothelioma was caused by his long-term exposure to asbestos during his service in United States Air Force and his subsequent private sector employment, based on litigant's failure to disclose his personal injury action as asset in his prior Chapter 13 bankruptcy case; failure of litigant to disclose action as asset had a de minimis effect on bankruptcy proceeding because Chapter 13 plan required litigant to repay creditors in full at standard interest rate, litigant was only weeks away from full repayment under plan at time he was diagnosed with mesothelioma, and there was no showing that litigant withheld his diagnosis from bankruptcy court in effort to game the bankruptcy system or that corporations named as defendants in personal injury action were otherwise prejudiced by litigant's nondisclosure in bankruptcy case. Clark v. AII Acquisition, LLC, 886 F.3d 261 (2d Cir. 2018).

Consortium of single-purpose entities that owned and managed hotels was judicially estopped from bringing fraud claims against bank and its subsidiaries due to consortium's failure to list claims as assets in bankruptcy proceedings; consortium had notice of potential fraud claims relating to interest rate on its loan from bank's subsidiary prior to confirmation of bankruptcy plan as result of bank's regulatory filing and news reports on its alleged interest-rate manipulation, consortium's failure to list claims was equivalent to representation they did not exist, bankruptcy court adopted that representation when it confirmed plan, and letting consortium assert claims would give it unfair advantage at expense of former creditors, who had right to consider claims during bankruptcy. BPP Illinois, LLC v. Royal Bank of Scotland Group PLC, 859 F.3d 188 (2d Cir. 2017).

Employer's prior argument before state workers' compensation board that claimant's pneumoconiosis diagnosis was incorrect did not judicially estop employer from arguing before federal Benefits Review Board that the misdiagnosis commenced three-year statute of limitations applicable to claim for black lung benefits; argument that diagnosis was incorrect was not irreconcilably inconsistent with claim that the diagnosis nevertheless started the statute of limitations. Black Lung Benefits Act, § 422(f), 30 U.S.C.A. § 932(f). Eighty Four Min. Co. v. Director, Office of Workers' Compensation Programs, 812 F.3d 308 (3d Cir. 2016).

In proceeding brought by Chapter 13 debtor for bank's alleged violation of automatic stay in foreclosing on real property which he acquired postpetition by means of undisclosed quitclaim deed from his son, district court did not abuse its discretion in finding that debtor's failure to amend his bankruptcy schedules to disclose his interest in property judicially estopped debtor from pursuing claim against bank for violating stay by foreclosing on this property postpetition when debtor had unscheduled ownership interest therein; debtor's failure to amend his schedules was implied representation to court that his financial status was unchanged, which district court implicitly accepted by operating as though debtor's financial status were unchanged, and debtor was aware of quitclaim deed and had motive to conceal his changed financial status. Fornesa v. Fifth Third Mortgage Company, 897 F.3d 624 (5th Cir. 2018).

District court did not abuse its discretion in failing to apply judicial estoppel so as to bar former Chapter 11 debtor, as member of limited liability partnership formed to operate and develop copper mine, from pursuing its potential partnership interest in action against other member for purportedly breaching partnership agreement by refusing to reinstate debtor after debtor tendered full amount of outstanding cash calls plus interest, notwithstanding debtor's failure to disclose its potential interest to the bankruptcy court; while nowhere in its bankruptcy disclosure did debtor or its parent explicitly disclose a partnership interest in the mine, debtor did list an interest in a "Joint Venture Agreement" in its disclosure of all executory contracts, though this was somewhat contradicted by its description elsewhere of the partnership as "dissolved," and district court had noted that trustee was aware of partnership and that all creditors had been paid in full. ASARCO, L.L.C. v. Montana Resources, Incorporated, 858 F.3d 949 (5th Cir. 2017).

Judicial estoppel applied to quiet title and breach of contract claims that had accrued at time of Chapter 7 debtor's bankruptcy but were not disclosed to the bankruptcy court. Feuerbacher v. Wells Fargo Bank National Association for ABFC 2006-OPT 1 Trust, Asset Backed Funding Corporation Asset-Backed Certificates, Series 2006-OPT1, 701 Fed. Appx. 297 (5th Cir. 2017).

Chapter 13 debtors asserted legal position in personal injury action for alleged workplace injuries that was plainly inconsistent with prior position asserted in bankruptcy proceeding, as required for judicial estoppel to bar debtors from pursuing the postpetition personal injury claim; debtors had affirmative duty to disclose claim to bankruptcy court, failed to disclose claim even though they amended bankruptcy plan three separate times after filing personal injury action, and by failing to disclose the claim, debtors impliedly represented to bankruptcy court that they had no such claim. Allen v. C & H Distributors, L.L.C., 813 F.3d 566 (5th Cir. 2015).

Judicial estoppel is not permitted if it was the court, not the party, that instigated the first position that the party later chose to abandon. Gabarick v. Laurin Maritime (America) Inc., 753 F.3d 550 (5th Cir. 2014).

Judicial estoppel protects the legal system, not the parties, and requires a party not take intentionally self-contradictory positions at different points in a case to obtain an unfair advantage; required is that a position taken at one time in a suit be clearly inconsistent from that taken at another, and the party's earlier position must have been accepted by the court. Huffman v. Union Pacific R.R., 675 F.3d 412 (5th Cir. 2012).

Employee had enough information about a potential hostile work environment claim against employer before the closing of her bankruptcy estate to trigger her duty to disclose the possible claim to the bankruptcy court as an asset, as necessary for employee's failure to disclose the claim to result in her being judicially estopped from bringing the claim against employer; employee, who was African-American, alleged that her co-workers began to place monkeys in different forms around her cubicle, and that she had complained to human resources about the monkeys, several months before her bankruptcy discharge, and employee's letter to employer's diversity office nine months before her bankruptcy discharge stated that she had been dealing with unprofessional and racist behavior for two years. Civil Rights Act of 1964 § 701, 42 U.S.C.A. § 2000e et seq.; Mich. Comp. Laws Ann. § 37.2101 et seq. Davis v. Fiat Chrysler Automobiles U.S., LLC, 747 Fed. Appx. 309 (6th Cir. 2018), petition for certiorari filed (U.S. Jan. 9, 2019).

Representations that employer, a trucking company, made to Internal Revenue Service (IRS), that the untaxed payments for meals and incidental expenses under accountable plan that it was establishing were reimbursements for travel expenses employer reasonably expected its drivers to incur, did not judicially estop employer from later contending that these same payments were not reimbursement for reasonable travel expenses for purposes of these employees' regular rate calculation under the FLSA, but rather were wages that were properly used to offset the calculation of minimum wages due; employer's representations to IRS were not clearly inconsistent with its later contention, given that IRS regulations governing accountable plans were not identical to Department of Labor (DOL) regulations governing calculation of employees' regular rates for minimum wage purposes, and findings under each set of regulations were not coextensive. Fair Labor Standards Act of 1938 §§ 6, 7, 29 U.S.C.A. §§ 206, 207(e); 26 C.F.R. §§ 1.62-2(c)-(f), 1.62-2(d)(3)(i); 29 C.F.R. § 778.1. Baouch v. Werner Enterprises, Inc., 908 F.3d 1107 (8th Cir. 2018).

Owners of intellectual property rights associated with motion pictures "Gone With the Wind" and "Wizard of Oz," and multiple "Tom & Jerry" animated motion pictures, were not precluded, under doctrine of judicial estoppel, from asserting trademark infringement claim, despite owners' statement in memorandum in support of its claim for damages and request for entry of final judgment in copyright and trademark infringement action that, if a grant of summary judgment on the copyright claim was appealed and affirmed by the Court of Appeals, the owners would not need to pursue the other pending claims in district court; owners' present position was not clearly inconsistent with prior statement in that owner did not receive all the relief they wanted under Copyright Act, statement was not an argument that owners persuaded court to accept, and dismissing owners' trademark claims based on the statement would treat owners unfairly by forcing them to adhere to a conditional prediction when the necessary condition did not occur. Lanham Trade-Mark Act, § 1 et seq., 15 U.S.C.A. § 1051 et seq.; 17 U.S.C.A. § 101 et seq. Warner Bros. Entertainment, Inc. v. X One X Productions, 840 F.3d 971 (8th Cir. 2016).

Chapter 13 debtor who had not disclosed to bankruptcy court her lawsuit against her public employer for discrimination on the basis of race and sex in violation of Title VII and retaliation in violation of the Equal Protection Clause of the Fourteenth Amendment, which arose during the pendency of her bankruptcy proceedings, was judicially estopped from pursuing claims; employment discrimination suit was clearly inconsistent with debtor's failure to amend her Chapter 13 bankruptcy schedules to include the claims, the bankruptcy court had adopted her representation that no claims existed when it discharged $18,391.49 of her unsecured debt, and debtor could have received an unfair advantage because her trustee could have asked the bankruptcy court to order her to make any proceeds from a potential settlement available to her unsecured creditors. U.S.C.A. Const.Amend. 14; Civil Rights Act of 1964, § 701 et seq., 42 U.S.C.A. § 2000e et seq. Van Horn v. Martin, 812 F.3d 1180 (8th Cir. 2016).

Under Minnesota law, three conditions must be met before the judicial estoppel applies: first, the party presenting the allegedly inconsistent theories must have prevailed in its original position, second, there must be a clear inconsistency between the original and subsequent position of the party, and third, there must not be any distinct or different issues of fact in the proceedings. Occidental Fire & Cas. Co. v. Soczynski, 765 F.3d 931 (8th Cir. 2014).

Licensees who held gambling licenses to own and operate cardrooms in California were not judicially estopped from challenging in a § 1983 the constitutionality of California statutes that prohibited cardroom licensees from owning more than a one-percent interest in any out-of-state casinos because of their prior lobbying of California legislature to support the adoption of the one-percent ownership limitation, where, at time of licensees' prior lobbying activity, California law completely banned investment in out-of-state casinos. 42 U.S.C.A. § 1983; Cal. Bus. & Prof. Code §§ 19858, 19858.5. Flynt v. Shimazu, 940 F.3d 457 (9th Cir. 2019).

Parent of child that was injured by toy was judicially estopped from asserting claims against toy manufacturer for loss of consortium, emotional distress, and past and future medical expenses, under Arizona law, where he omitted such claims from the asset disclosure schedule in his Chapter 7 bankruptcy proceeding. 11 U.S.C.A. 101 et seq. Monje v. Spin Master Incorporated, 679 Fed. Appx. 535 (9th Cir. 2017).

Doctrine of judicial estoppel prevented lender from asserting that individual borrower did not sign loan agreements in California, for purposes of California-law choice-of-law analysis on borrower's motion for attorneys' fees and costs after summary judgment in her favor in lender's suit for breach of contract, where borrower argued in her motion for summary judgment that she did not sign and execute the contract at issue, bank acknowledged in response that borrower made, executed, and delivered contract to lender, lender submitted documents into evidence indicating that borrower had executed agreements in California, and district court concluded that she had signed the agreements in California. First Intercontinental Bank v. Ahn, 798 F.3d 1149 (9th Cir. 2015).

Judicial estoppel precluded employment discrimination claim that employee had not disclosed in Chapter 7 bankruptcy proceeding, notwithstanding her assertions of inadvertence or mistake, since the requirement to disclose all employment

discrimination claims was specifically brought to her attention, she amended her bankruptcy filings but still did not disclose the claim, and she had a motive to conceal the claim. Ordonez v. Canyons School District, 788 Fed. Appx. 613 (10th Cir. 2019).

Prior bankruptcy proceeding, in which debtor intentionally failed to disclose pending employment discrimination claims seeking over $1.8 million in damages from employer, judicially estopped debtor from bringing claims against employer in district court, since debtor had knowledge of her pending lawsuit at time that she petitioned for Chapter 7 bankruptcy protection, and she had significant motive to conceal pending lawsuit from bankruptcy court. Dunn v. Advanced Medical Specialties, Inc., 556 Fed. Appx. 785 (11th Cir. 2014).

African-American trainer officer at military educational college had motive to conceal his potential Title VII race discrimination claim against college and supervisor during bankruptcy proceedings, as required to support application of judicial estoppel doctrine in Title VII discrimination action; officer appeared to gain an advantage when he failed to list his claim with Equal Employment Opportunity Commission (EEOC) on his debtor's schedule because, by omitting claim, he could have kept any proceeds resulting from his claim for himself and not have them become part of bankruptcy estate. Civil Rights Act of 1964, § 701 et seq., 42 U.S.C.A. § 2000e et seq. Marable v. Marion Military Institute, 906 F. Supp. 2d 1237 (S.D. Ala. 2012).

Arizona does not follow the doctrine of regulatory estoppel. Nammo Talley Inc. v. Allstate Ins. Co., 99 F. Supp. 3d 999 (D. Ariz. 2015).

Prior automatic stays were sufficient to conclude that bankruptcy court accepted position of debtor mortgagor, weighing in favor of finding that she was judicially estopped from subsequently bringing claims for quiet title, replevin, defamation, wrongful foreclosure, violations of Fair Debt Collection Practices Act (FDCPA), and cancellation of instruments; although all of mortgagor's bankruptcy proceedings ultimately were dismissed, she enjoyed benefit of automatic stays and did not comply with requirement of full, accurate disclosures. 11 U.S.C.A. § 362(a); Consumer Credit Protection Act § 802, 15 U.S.C.A. § 1692 et. seq. Mangaoang v. Special Default Services, Inc., 427 F. Supp. 3d 1195 (N.D. Cal. 2019).

A party may assert the doctrine of judicial estoppel in a motion for summary judgment to bar a claim based on an opponent's inconsistent position. Fed. R. Civ. P. 56(a). Nada Pacific Corp. v. Power Eng'g and Mfg., Ltd., 73 F. Supp. 3d 1206 (N.D. Cal. 2014).

Bankruptcy trustee of personal injury plaintiff was not judicially estopped from pursuing personal injury suit on behalf of plaintiff's creditors, even though plaintiff failed to notify bankruptcy court of his personal injury action at the time he filed for bankruptcy, precluding plaintiff/debtor from pursing personal injury claim; plaintiff's personal injury claim became an asset of bankruptcy estate for benefit of creditors after he filed his bankruptcy petition, trustee became real party in interest in personal injury action upon filing of bankruptcy petition and was vested with authority and duty to pursue action, and trustee was substituted into personal injury action as real party in interest. Copelan v. Techtronics Industries Co., Ltd., 95 F. Supp. 3d 1230 (S.D. Cal. 2015).

The doctrine of judicial estoppel did not preclude job applicant's employment discrimination claim against employer, even though applicant had previously filed a complaint with the State Commission on Human Rights and Opportunities (COHR) claiming employer rescinded her job offer on account of her post-traumatic stress disorder (PTSD) and she alleged in federal court employer rescinded her job offer based on her positive drug test; applicant was authorized to use medical marijuana based on her PTSD diagnosis, and the facts in the case, which indicated employer rescinded its job offer because of applicant's medical use of marijuana, were undisputed. Noffsinger v. SSC Niantic Operating Company, LLC, 338 F. Supp. 3d 78 (D. Conn. 2018).

Court could not find that judicial or equitable estoppel precluded requester's claims challenging Department of Justice's (DOJ) response to her Freedom of Information Act (FOIA) request regarding records pertaining to her that erroneously indicated that she was a national security risk, despite stipulation that requestor entered into in prior FOIA action in which she agreed to not to bring any further actions challenging adequacy of DOJ's search for responsive records or its invocation of FOIA exemptions,

where DOJ did not indicate which of requester's current claims were precluded by the stipulation. 5 U.S.C.A. § 552. Crisman v. Department of Justice, 332 F. Supp. 3d 139 (D.D.C. 2018).

Debtor's failure to disclose as asset on bankruptcy schedules a prepetition cause of action is tantamount to a representation that no such cause of action existed, of kind which, if knowingly false, may provide basis to judicially estop debtor from later asserting that cause of action. Milian v. Wells Fargo & Co., 507 B.R. 386 (S.D. Fla. 2014).

When debtor represents to bankruptcy court under oath that he has no pending claims, while simultaneously pursuing cause of action against defendant in district court, debtor has taken inconsistent positions, such as may trigger application of judicial estoppel. Taylor v. Novartis Pharmaceuticals Corporation, 506 B.R. 157 (S.D. Fla. 2013).

Statement of relator, the former chief executive officer (CEO) of medical practice, in prior lawsuit brought by shareholder for practice was not basis of or important to settlement in prior action, and, thus, relator was not judicially estopped from bringing claims in qui tam action against practice and several of its physicians and shareholders, alleging they conspired to submit fraudulent bills to Medicare, and then discharged him in retaliation for his complaints about their unlawful billing practices in violation of False Claims Act (FCA); prior action involved 22 claims for relief, only two of which concerned scans referred by physicians and shareholders to sites in which they held financial interest that were basis for relator's instant lawsuits, and one half of a page out of 18-page mediation document concerned scans. 31 U.S.C.A. §§ 3729 et seq. Singer v. Progressive Care, SC, 202 F. Supp. 3d 815 (N.D. Ill. 2016).

Debtor was judicially estopped from bringing action against debt collector, although it did not appear that his former position was accepted by the bankruptcy court, where, in a deliberate attempt to deceive the bankruptcy court and manipulate the judicial system to gain an unfair advantage over his creditors, including debt collector, he failed to disclose his action against debt collector in his bankruptcy schedules, and he only amended his schedules in response to debt collector's motion for summary judgment based on judicial estoppel. Barker v. Asset Acceptance, LLC, 874 F. Supp. 2d 1062 (D. Kan. 2012), appeal dismissed, (10th Circ. 12-3175)(Oct. 2, 2012).

Employer's objection at unemployment insurance hearing to evidence regarding employee's transfer, which occurred almost one year before her termination, as being irrelevant because it did not rely on transfer as basis for her termination did not warrant application of doctrine of judicial estoppel in employee's subsequent discrimination action, in which employer alleged that employee's demotion was due to insubordination; purpose of unemployment insurance hearing was to determine whether employee was ineligible for unemployment due to employer's stated basis for her termination. Ky. Rev. Stat. Ann. § 341.370. Ramirez v. Bolster & Jeffries Health Care Group, LLC, 277 F. Supp. 3d 889 (W.D. Ky. 2017).

Judicial estoppel bars employment related claims not disclosed in prior bankruptcy proceedings where: (1) plaintiff's later position was clearly inconsistent with the one he asserted under oath in the bankruptcy proceedings; (2) the bankruptcy court adopted the contrary position either as a preliminary matter or as part of a final disposition; and (3) plaintiff asserted the inconsistent position to gain an unfair advantage, or the omission did not result from mistake or inadvertence. Cotita v. Verizon Wireless, 54 F. Supp. 3d 714 (W.D. Ky. 2014).

Consumer who, as a result of her failure to disclose her pending action against drug manufacturer in filing her bankruptcy petition, was otherwise barred by judicial estoppel from pursuing her claim could not proceed on behalf of her creditors, although dismissal of claim without prejudice to ability of Chapter 7 trustee to pursue claim further was warranted. In re Vioxx Products Liability Litigation, 889 F. Supp. 2d 857 (E.D. La. 2012).

The doctrine of judicial estoppel did not bar assignee from challenging the construction of the terms "handle," "base" or "body" in patent infringement case; prior patent infringement case involved one patent for desktop spring-enabled stapler, prior case did not construe the terms "handle," "base" or "body," and current case involved two patents for desktop spring-enabled staplers. Amax, Inc. v. ACCO Brands Corp., 282 F. Supp. 3d 432 (D. Mass. 2017).

Judicial estoppel did not bar former Chapter 7 trustee from claiming that debtor's real property had no value for the estate, even though he had filed several reports with the bankruptcy court indicating otherwise; trustee's reports were not asserted under oath in a prior proceeding, and were not even signed, the bankruptcy court did not adopt the statements in trustee's reports as a preliminary matter or as part of a final disposition, and trustee's reports of net value in the property were found to be the result of "carelessness or inattention." In re Modern Plastics Corporation, 577 B.R. 270 (W.D. Mich. 2017).

District court did not rule at motion-to-dismiss stage on timeliness of plaintiff's claims, such that defendant would be precluded from arguing such issue on motion for summary judgment on theory that motion for summary judgment was improper motion for reconsideration, even though District Court concluded at dismissal stage that claims were timely, since Court did so based on allegations in complaint, as was proper at dismissal stage. Fed. R. Civ. P. 12(b)(6), 56. West Virginia Pipe Trades Health & Welfare Fund v. Medtronic, Inc., 139 F. Supp. 3d 976 (D. Minn. 2015).

Driver's employer, domiciled in Mississippi, was not judicially estopped from asserting defense that two-year limitations period governing Texas motorists' personal injury suit arising out of accident in Kentucky, under Kentucky law, had run, after having represented to Texas court, in motorists' prior suit, that dismissal would not work injustice if suit was refiled in Kentucky because limitations period had not run; statements by counsel for employer in Texas case involved inadvertent misstatements of law, rather than intentional effort to deceive either Texas court or motorists, in that they were made in context of special appearance seeking dismissal for lack of jurisdiction, it was accurate statement at time it was made, it was unnecessary for employer to attempt to deceive Texas court into granting dismissal on basis of lack of jurisdiction, and it was not necessary for Texas court to accept employer's representation in resolving employer's special appearance, given that dismissal was warranted for lack of personal jurisdiction over employer, and thus, there was no reason for Texas court to delve into limitations issue. Douglas v. Norwood, 132 F. Supp. 3d 834 (N.D. Miss. 2015).

Under Nebraska law, truck driver's testimony from separate personal injury action stating that his shoulder injury had not been exacerbated by subsequent rear-end accident with National Guard tractor-trailer did not preclude under the judicial estoppel doctrine driver from claiming that his shoulder was injured in the rear-end accident in personal injury action against United States; driver's separate action was dismissed with prejudice after parties settled, so there was no indication of judicial acceptance of driver's claim, and record did not demonstrate bad faith or actual intent to mislead on driver's part. Lueders v. Arp, 321 F. Supp. 3d 968 (D. Neb. 2018).

Homeowner-debtor's claims against lender for violation of SCRA and Nevada law, by alleged wrongful foreclosure on residential property while homeowner was enlisted in Army, were barred by judicial estoppel, where homeowner-debtor failed to include claims on his prior Chapter 7 bankruptcy schedules. Servicemembers Civil Relief Act, § 1(a) et seq., 50 App. U.S.C.A. § 501 et seq.; West's NRSA 107.085, 107.086. Giri v. HSBC Bank USA, 98 F. Supp. 3d 1147 (D. Nev. 2015).

Swedish medical device manufacturer's participation as a defendant in two related product liability actions, without raising personal jurisdiction defense in either case, did not bar manufacturer from defense of personal jurisdiction based on a theory of judicial estoppel, in multi-district product liability action; manufacturer did not persuade courts in the other actions to find that personal jurisdiction existed there, and plaintiffs did not show that manufacturer was attempting to gain unfair advantage by asserting the defense in instant action. Fed. R. Civ. P. 12(b)(2). In re Atrium Medical Corp. C-Qur Mesh Products Liability Litigation (MDL No. 2753), 299 F. Supp. 3d 324 (D.N.H. 2017).

Pharmaceutical corporation and officers did not take positions that were irreconcilably inconsistent in institutional investors' individual actions against corporation and officers and class actions against corporation and officers, and thus judicial estoppel did not apply to defendants' argument that institutional investors' common law fraud claims were precluded under Securities Litigation Uniform Standards Act (SLUSA); in motion to dismiss, defendants did not dispute that individual actions were "new" actions, or argue that individual actions were actually coordinated in real-time with class actions, rather defendants argued that, despite lack of real-time coordination between individual actions and class actions, cases had functionally proceeded as a single

action within meaning of SLUSA's catchall provision, and thus, could be grouped into a "covered class action." Securities Exchange Act of 1934 § 28, 15 U.S.C.A. § 78bb(f)(5)(B). North Sound Capital LLC v. Merck & Co., Inc., 314 F. Supp. 3d 589 (D.N.J. 2018).

Judicial estoppel did not apply, based on online streaming music service operator's inconsistent position in parties' stipulation of dismissal, so as to provide consumer with standing to sue operator of online music streaming service under New York's deceptive business acts and false advertising statutes, both of which required the deceptive transaction to have occurred in New York, for false misrepresentations that certain content was exclusively available through the service; while court "so ordered" the stipulation to which parties voluntarily agreed, it never evaluated or adopted the arguments by operator that persuaded consumer to do so that stipulation of dismissal was functional equivalent of a settlement. Baker-Rhett v. Aspiro AB, 324 F. Supp. 3d 407 (S.D. N.Y. 2018).

Even assuming he took an inconsistent litigation position, judicial estoppel did not bar brother from arguing, in his action against his sister for breach of contract, that sister's trust received beneficial ownership of shares of stock transferred pursuant to their mother's divorce; no court issued a binding final judgment that the trust did not receive a beneficial interest in the shares, and there was no indication that allowing the argument would give brother an unfair advantage or impose an unfair detriment on sister. Genger v. Genger, 76 F. Supp. 3d 488 (S.D. N.Y. 2015).

Mortgagor was judicially estopped from bringing trespass claim against mortgagee's property-preservation contractor, after mortgagor's Chapter 7 bankruptcy case in which such cause of action had not been listed in mortgagor's bankruptcy schedules; mortgagor's present assertion that he possessed a cause of action for trespass was inconsistent with position taken by mortgagor in bankruptcy case, non-existence of trespass claim was a position of fact, which bankruptcy court and trustee had relied upon, and the bankruptcy court thus had accepted, when discharging mortgagor as debtor and when administering the bankruptcy estate, and mortgagor's failure to disclose the cause of action in his bankruptcy case was not inadvertent. 11 U.S.C.A. § 541(a). Vinal v. Federal Nat. Mortg. Ass'n, 131 F. Supp. 3d 529 (E.D. N.C. 2015), appeal dismissed, (4th Cir. 15-2239)(Jan. 13, 2016).

Chapter 7 debtor-worker's failure to disclose non-malignancy asbestos claims in bankruptcy filing was not in bad faith, and thus non-malignancy asbestos claims, which were asserted against owners of ships, on which debtor was exposed to asbestos, were not barred on grounds of judicial estoppel, where debtor's non-malignancy claims were administratively dismissed eight years before bankruptcy action was filed, and although dismissal order appeared to invite reinstatement subject to certain conditions, claims were not reinstated until new presiding judge, sua sponte, did so six years after bankruptcy action was closed and seventeen years after claims were originally filed. 11 U.S.C.A. § 541(a)(1). Figueroa v. A-C Product Liability Trust, 542 B.R. 333 (E.D. Pa. 2015).

Maritime worker did not take an irreconcilably inconsistent position by not including non-malignancy asbestos claims as assets in his first bankruptcy filing, and thus worker's first Chapter 7 bankruptcy did not preclude worker's non-malignancy asbestos claims against shipowners under doctrine of judicial estoppel, where worker did not file a non-malignancy asbestos claim until three weeks after filing his bankruptcy petition, there was no evidence that worker knew of his non-malignancy asbestos claims when he filed his first bankruptcy petition, and worker did not have a duty to amend his bankruptcy petition to include the subsequently-filed non-malignancy asbestos claim. Gaito v. A-C Product Liability Trust, 542 B.R. 155 (E.D. Pa. 2015).

Though there is no rigid test for judicial estoppel, three factors inform federal court's decision whether to apply it: there must be (1) irreconcilably inconsistent positions, (2) adopted in bad faith, and (3) showing that estoppel addresses harm and no lesser sanction is sufficient. Claudio v. MGS Mach. Corp., 798 F. Supp. 2d 575 (E.D. Pa. 2011).

Subcontractor had fair opportunities to argue that doctrine of judicial estoppel did not apply to its conduct in bringing second state court lawsuit against general contractor after arguing on appeal in its first lawsuit that the district court's interpretation of the subcontract eliminated the possibility of a second lawsuit; subcontractor had two opportunities to address the issue, once on general contractor's original motion to dismiss, and once on general contractor's amended motion to dismiss, and most of the

pertinent facts were taken from court records, and subcontractor itself supplied the rest. Haines & Kibblehouse, Inc. v. Balfour Beatty Const., Inc., 789 F. Supp. 2d 622 (E.D. Pa. 2011).

Former employee was not judicially estopped from asserting employment discrimination claims based on his failure to disclose the claims during bankruptcy proceedings; employee was not required to disclose claims that accrued after the date of his original bankruptcy petition because he converted his bankruptcy from Chapter 13 to Chapter 7. 11 U.S.C.A. § 348(f)(1)(A). Garcimonde-Fisher v. Area203 Marketing, LLC, 105 F. Supp. 3d 825 (E.D. Tenn. 2015).

Judicial estoppel doctrine did not bar oil company and underwriters of its insurance policy from asserting, in third amended complaint, redhibition claim under Louisiana law against manufacturer of allegedly defective underwater tether chain, where redhibition claim was not inconsistent with oil company and underwriters' previous disavowal of claims against manufacturer relying on purchase order, since it was not grounded in purchase order, but, rather, was based on pre-purchase representations and duties imposed on manufacturer by law of redhibition. Petrobras America, Inc. v. Vicinay Cadenas, S.A., 276 F. Supp. 3d 691 (S.D. Tex. 2017).

Applicant for employment was not judicially estopped from asserting Fair Credit Reporting Act (FCRA) claims against prospective employer based on his failure to disclose the claims during bankruptcy proceedings, where employee filed voluntary notice of conversion of his bankruptcy case from Chapter 13 to Chapter 7, and there was no evidence of bad faith on applicant's part in converting his bankruptcy case, so that FCRA claims were never part of the Chapter 7 estate. 11 U.S.C.A. § 348(f)(1)(A). Thomas v. FTS USA, LLC, 193 F. Supp. 3d 623 (E.D. Va. 2016).

Employer named as defendant in class action of which Chapter 13 debtor was member, having opted-in by signing one-page form more than one year prior to commencement of her bankruptcy case, failed to show that debtor's failure to schedule interest in class suit was in nature of an intentional deceit or manipulation of bankruptcy system, such that debtor was not judicially estopped from pursuing claims post-bankruptcy; debtor did not become aware of potential value of class claims until bankruptcy court had denied confirmation of her plan, and trustee had moved to dismiss bankruptcy case. Stocks v. DoAll Company, 340 F. Supp. 3d 789 (E.D. Wis. 2018).

Eleventh Circuit considers two factors in the application of judicial estoppel in cases pending in a federal court and arising under federal law: (1) it must be shown that the allegedly inconsistent positions were made under oath in a prior proceeding, and (2) such inconsistencies must be shown to have been calculated to make a mockery of the judicial system. In re Kourogenis, 539 B.R. 625 (Bankr. S.D. Fla. 2015).

Mother who, in connection with her own prior Chapter 13 filing, had failed to schedule as estate assets either her claim against her debtor-son or life estate debtor agreed to grant her in exchange for improvements she agreed to finance to his property, was judicially estopped from thereafter filing proof of claim in debtor's case for cost of these improvements or from claiming interest in debtor's property, notwithstanding that this allegedly resulted in windfall for debtor; need to protect integrity of bankruptcy court justified application of judicial estoppel, given mother's failure to demonstrate that she had acted in good faith in not scheduling these estate assets, and given that court had relied on mother's omissions in confirming her plan. In re Blanchette, 582 B.R. 819 (Bankr. D. Mass. 2018).

Even when bankruptcy case is reopened to permit debtor to schedule an omitted cause of action, and when trustee is substituted as plaintiff and successfully pursues cause of action, there is no guarantee that debtor will enjoy any benefit whatsoever, even if the trustee's recovery is sufficient to permit payment of his expenses and general unsecured claims, since debtor's entitlement to any surplus may be subject to judicial estoppel or other equitable defenses. In re Arana, 456 B.R. 161 (Bankr. E.D. N.Y. 2011).

Equitable estoppel or judicial estoppel may apply to prevent postconfirmation debtor or debtor's representative from pursuing preconfirmation claims after Chapter 11 plan is confirmed, if disclosure statement and plan do not simply lack sufficient information, but are affirmatively misleading. In re Diabetes America, Inc., 485 B.R. 340 (Bankr. S.D. Tex. 2012).

Judicial estoppel did not preclude government's arguments as to claims brought against it by defense contractor challenging cancellation of Naval Air Systems Command (NAVAIR) solicitation for procurement of helicopters and subsequent proposed sole-source procurement of same helicopters from Russian state-owned enterprise, since government's arguments did not contradict those made before Government Accountability Office (GAO) with respect to same actions. Defense Technology, Inc. v. U.S., 99 Fed. Cl. 103 (2011).

Asbestos product manufacturer's argument that California's continuous trigger rule applied to question of liability insurance coverage for continuous or progressively deteriorating illness of mesothelioma suffered by California resident caused by asbestos product manufacturer's activities in California was not inconsistent with its argument years earlier that Rhode Island law applied in Rhode Island action against same and other insurers regarding coverage for claims in multiple suits in 19 states for environmental property damage and possible personal injury, and, thus, judicial estoppel did not apply. Textron Inc. v. Travelers Casualty & Surety Co., 45 Cal. App. 5th 733, 259 Cal. Rptr. 3d 26 (2d Dist. 2020), review denied, (July 8, 2020).

Defendant restaurant investors who testified that they had never formed partnership with plaintiff were not judicially estopped from amending answer to assert defense that any partnership with plaintiff investor was superseded by formation of restaurant corporation; defendant investors were not successful in asserting their position that a partnership was never formed, but instead took their allegedly inconsistent positions during litigation to determine that question, which was a permissible practice of advancing alternative arguments before any final decision was reached. Eng v. Brown, 230 Cal. Rptr. 3d 771 (Cal. App. 4th Dist. 2018).

Condominium landlord's attempt to recover attorney's fees in small claims court action under condominium lease provision, which allowed for "reasonable attorney's fees," did not judicially estop landlord from asserting that tenants were limited by statute from recovering greater than $150 in connection with landlord's small claims appeal. Cal. Civ. Proc. Code § 116.780(c). Dorsey v. Superior Court, 193 Cal. Rptr. 3d 834 (Cal. App. 4th Dist. 2015).

Accident victim's receipt of workers' compensation benefits from the State Compensation Insurance Fund did not judicially estop her, in negligence action against nonprofit premises owner, from denying that she was a volunteer/employee covered by the Workers' Compensation Act at time of accident; there was no evidence that victim ever asserted that she was a covered volunteer/employee in any proceeding before the Workers' Compensation Appeals Board, and the record did not establish that the Fund paid benefits as a result of any claim by victim, but rather victim alleged that defendant premises owner initiated a compensation claim without her knowledge and that she tried to return the benefits to the Fund. Minish v. Hanuman Fellowship, 214 Cal. App. 4th 437, 154 Cal. Rptr. 3d 87 (6th Dist. 2013), review filed, (Mar. 12, 2013).

Trial court improperly concluded that member of limited liability company (LLC) was judicially estopped from asserting standing to maintain a derivative action on behalf of the LLC based on inconsistent statements made by member's principal regarding his and member's relationship with LLC in prior litigation, where member's claims as pleaded in its derivative complaint were not based on any of the records from the prior litigation, so that the records were not impliedly incorporated into member's complaint, and, even if the records could have been considered, the trial court did not consider all of the elements required for judicial estoppel. Fla. Stat. Ann. § 605.0803. Landmark Funding, Inc on Behalf of Naples Syndications, LLC v. Chaluts, 213 So. 3d 1078 (Fla. 2d DCA 2017).

The doctrine of estoppel against inconsistent positions in judicial proceedings is based upon the theory that, where a party has made a record of his own case, upon which record he has sought and secured from a court a final judicial order or judgment based on the allegation made by him that the facts of his case as alleged by him in his own pleadings are true, which allegations as to the issuable facts have been likewise accepted by the opposite party as true, for the purpose of having rendered by the court its final decision or judgment on such record, thereafter each of the parties is estopped to alter his position on the record to the prejudice of an adverse party, where the parties and the subject matter involved in the litigation remain the same. Fintak v. Fintak, 120 So. 3d 177 (Fla. 2d DCA 2013).

The doctrine of judicial estoppel did not bar city from asserting that its purchase of liability insurance did not cover the negligence and wrongful death claims filed by parents, after their son died following an altercation with a bouncer at bar; insurer's declaratory judgment action in federal district court was dismissed without prejudice, parents consented to the dismissal, and thus no party succeeded in persuading a court to accept their allegedly inconsistent position. Gatto v. City of Statesboro, 353 Ga. App. 178, 834 S.E.2d 623 (2019).

Patient was not judicially estopped from asserting her medical malpractice claims against surgeon, his medical practice, and his corporation by virtue of her failure to list the claims as assets on the schedule of personal property she filed in her Chapter 7 bankruptcy proceeding, where patient successfully amended her bankruptcy petition to include the claims. Kamara v. Henson, 340 Ga. App. 111, 796 S.E.2d 496 (2017).

Judicial estoppel did not preclude professional conduct board from recommending any sanction other than suspension for attorney misconduct, despite argument that in prior proceedings hearing committee of board had recommended suspension; Supreme Court had rejected committee's previous recommendation, and neither the board nor the committee obtained an advantage as result of prior recommendation. In re Pangburn, 296 P.3d 1080 (Idaho 2013).

Tax deed petitioner was not judicially estopped, based on his contentions in a separate eviction proceeding, from asserting that limited liability company (LLC), as beneficiary of land trust that held a commercial property, repudiated an agreement for petitioner to purchase a majority interest in LLC, in petitioner's subsequent proceeding seeking a tax deed for the property, where there was no indication that petitioner was successful in the eviction proceeding, and petitioner did not take the inconsistent position of arguing that the agreement was still in effect in the eviction proceeding, but instead petitioner had alleged that he had partially performed his obligations under the agreement. In re County Treasurer and ex officio County Collector of Kane County, Illinois, 2018 IL App (2d) 170418, 427 Ill. Dec. 458, 118 N.E.3d 659 (App. Ct. 2d Dist. 2018), as modified on denial of reh'g, (Nov. 16, 2018) and appeal denied, 427 Ill. Dec. 756, 119 N.E.3d 1038 (Ill. 2019).

Alternative legal arguments presented by steel fabrication company in mechanics' lien action did not entail factual inconsistencies as to implicate judicial estoppel in legal malpractice action brought by company against law firm; evidence supported company's alternative positions, that it was an original contractor and that it was a subcontractor, as Vice President testified at one point that he believed his verbal agreement was with owners of building project directly, thus making him an original contractor, and at another point that he believed his verbal agreement was actually with construction manager, and unsigned contract identified company as a subcontractor, and, while company settled to recover amount less than it was owed to avoid possibility of recovering nothing in lien case, measure of damages in malpractice case would have been difference between settlement amount and full amount of lien, and, thus, company's alternative arguments would not have allowed it to obtain double recovery. Construction Systems, Inc. v. FagelHaber, LLC, 2015 IL App (1st) 141700, 394 Ill. Dec. 275, 35 N.E.3d 1244 (App. Ct. 1st Dist. 2015).

Commercial insurer was not judicially estopped from arguing that no judicial controversy existed, in declaratory judgment action brought against manufacturer, its agent, and agent's commercial insurer, in which clinic sought a declaration as to the rights and obligations under the commercial general liability policies issued to manufacturer, even if insurer had acknowledged a controversy between the parties in another case, where, although the clinic raised the judicial estoppel issue in the proceedings below, the trial court did not consider the argument, and the parties argued the merits of the judicial controversy issue before the trial court. Byer Clinic & Chiropractic, Ltd. v. State Farm Fire & Cas. Co., 2013 IL App (1st) 113038, 370 Ill. Dec. 472, 988 N.E.2d 670 (App. Ct. 1st Dist. 2013).

Concession by husband memorialized in earlier judgment of divorce, that wife's individual retirement account (IRA) was her separate nonmarital property, could have no judicial estoppel effect, once divorce court granted wife's motion for relief from judgment of divorce, and it became obligated to review the entire property distribution. 19 Me. Rev. Stat. § 722-A; Fed. R. Civ. P. 60(b)(1). Lovell v. Lovell, 2020 ME 139, 243 A.3d 887 (Me. 2020).

In challenge to validity of development rights and responsibilities agreement between property owners and county, county was not judicially estopped from asserting to Court of Appeals that agreement was invalid, even though county had contended before trial court and Court of Special Appeals that agreement was valid; county's change of position occurred in same litigation rather than in prior litigation, and there was no evidence that county intentionally misled court to gain unfair advantage. Lillian C. Blentlinger, LLC v. Cleanwater Linganore, Inc., 456 Md. 272, 173 A.3d 549 (2017).

Commonwealth's position at codefendant's trial, that murder victim's blood alcohol level and his blood loss explained why he mistakenly identified the second shooter as an "Asian kid," did not judicially estop Commonwealth from asserting at defendant's trial that the victim's identification of the defendant was reliable; although evidence regarding victim's blood loss and intoxication was relevant to the reliability of the victim's identification of both defendant and codefendant, the Commonwealth's position in codefendant's trial was tailored to the unreliability of the victim's identification of codefendant and not defendant, such the Commonwealth's position in defendant's trial was distinct. Com. v. Middlemiss, 465 Mass. 627, 989 N.E.2d 871 (2013).

Daughter of resident of nursing home was judicially estopped from bringing wrongful death lawsuit against nursing home for failure to disclose the lawsuit on her Chapter 13 bankruptcy schedules, even though daughter attempted to amend her schedules after nursing home moved for summary judgment, where daughter had a continuing duty to update schedules but did not do so, bankruptcy court accepted original bankruptcy schedules and discharged daughter under original schedules, and daughter, who was the sole beneficiary of her suit and resident's estate, had knowledge of the facts supporting her cause of action prior to the discharge of bankruptcy proceeding. Adams v. Graceland Care Center of Oxford, LLC, 208 So. 3d 575 (Miss. 2017).

Judicial estoppel applied to bar debtor-painter's personal injury action against homeowners, alleging he slipped and fell while painting in their bathroom, based on debtor's failure to disclose personal injury claim in bankruptcy proceeding; by not disclosing his claim in the bankruptcy proceeding, debtor took a position that was inconsistent with one previously taken during his slip-and-fall litigation, the bankruptcy court adopted and accepted the previous position that he had made a full and complete disclosure when the court confirmed his Chapter 13 bankruptcy plan, and debtor's failure to disclose claim was not inadvertent, as he had knowledge about his personal injury lawsuit, which was filed while his bankruptcy case was open. Jackson v. Harris, 303 So. 3d 454 (Miss. Ct. App. 2020).

Judicial acceptance, for purposes of applying judicial estoppel, does not require that a party prevail on the merits, but only that the first court adopted the position urged by the party, either as a preliminary matter or as part of a final disposition. Western Ethanol Company, LLC v. Midwest Renewable Energy, LLC, 305 Neb. 1, 938 N.W.2d 329 (2020).

Defense of judicial estoppel did not apply to bar chapter 7 trustee's suit on behalf of debtor patient's estate against treating physicians and hospitals on claim for medical malpractice that had not been included in patient's schedule of assets before she was granted chapter 7 discharge and case was closed, where bankruptcy case was reopened for purpose of administering claim, trustee had never taken inconsistent position with regard to malpractice claim in bankruptcy case, and trustee was not burdened with patient's allegedly inconsistent statements to courts. 11 U.S.C.A. § 350(b). Alward v. Johnston, 199 A.3d 1190 (N.H. 2018).

Trial court properly declined to judicially estop landowner from denying existence of deeded right-of-way over its land in favor of property owners, where, two years before landowner became party to action in which owners asserted the right-of-way, owners knew that they would have to prove existence of right-of-way, so that landowner did not derive unfair advantage from being permitted to deny existence of right-of-way. 412 South Broadway Realty, LLC v. Wolters, 147 A.3d 417 (N.H. 2016).

Village and village officials were not judicially estopped, in building owner's action in state court, alleging negligence in ordering the demolition of owner's building after it was damaged in a fire, from raising the affirmative defense of governmental immunity, where village and officials had argued, in support of their summary judgment motion in owner's prior federal action, that there was no dispute that owner had adequate remedy in state court, not that a negligence action would provide an adequate remedy. Reynolds v. Krebs, 143 A.D.3d 1256, 40 N.Y.S.3d 258 (4th Dep't 2016).

Premises owner's defense to personal injury lawsuit brought by worker, who fell from a ramp on her property, that the ramp was structurally sound, judicially estopped her from bringing third-party claim against contractor, who purportedly built the ramp, claiming that ramp was not structurally sound, since owner asserted inconsistent positions with respect to same facts about subject ramp. Cutler v. Thomas, 57 Misc. 3d 956, 65 N.Y.S.3d 429 (Sup 2017).

Judicial estoppel will not bar litigating parties from choosing alternative forms of relief. Broten v. Broten, 2015 ND 127, 863 N.W.2d 902 (N.D. 2015).

Representations made by local exchange carrier to Federal Communications Commission (FCC) in earlier proceeding, requesting waiver of time to file intrastate tariffs for payphone services, did not preclude, under the doctrine of judicial estoppel, carrier from subsequently arguing that it did not rely on FCC's waiver order in action requesting that the Public Utilities Commission (PUC) order the carrier to pay refunds to public access line subscribers; even if carrier's representations to FCC were inconsistent with its representations to PUC, carrier told FCC that it would make refunds to the extent that new tariffs were lower than existing rates, and waiver order included the refunds requirement for carriers relying on the order. Communications Act of 1934 § 276, 47 U.S.C.A. § 276(b). Northwest Public Communications Council v. Qwest Corporation, 279 Or. App. 626, 379 P.3d 633 (2016).

Trial justice was justified in his use of judicial estoppel to prevent State from reneging on its word and arguing that it could not be held responsible for co-examiner expenses for which it had previously lobbied in State's public nuisance action against former lead pigment manufacturers, where trial justice predicated his decision granting the State's request to appoint examiners and ordering manufacturers jointly responsible for all related expenses upon the State's representation that manufacturers could seek reimbursement if the judgment were to be reversed on appeal. State v. Lead Industries Ass'n, Inc., 69 A.3d 1304 (R.I. 2013).

Judicial estoppel did not apply and thus did not bar testator's son from asserting in his action to impeach will that testator lacked testamentary capacity when she executed will, even though son, in prior action involving validity of powers of attorney appointing son as testator's attorney-in-fact, had asserted that testator was capable of executing powers of attorney; son's factual assertions that testator lacked sufficient capacity to execute will were not necessarily inconsistent with his assertions that testator possessed sufficient capacity several months before or after that time, and court did not rely upon son's assertions in rendering its decision in prior action. D'Ambrosio v. Wolf, 809 S.E.2d 625 (Va. 2018).

Mortgagee was not judicially estopped from arguing that attorney fees and costs awarded to mortgagor were subject to offset by amount of any good faith settlements previously made with mortgagor by other jointly liable parties in subprime mortgage dispute with mortgagee, where mortgagee received no benefit from arguing in previous appeal that award of fees and costs was punitive in nature, rather than compensatory. Quicken Loans, Inc. v. Brown, 777 S.E.2d 581 (W. Va. 2014), cert. denied, 136 S. Ct. 34 (2015).

City was not judicially estopped from specially assessing property owner for special benefits resulting from roundabout construction, even though city conceded no special benefits arose in condemnation action; special benefits in condemnation actions were limited to immediate or imminent increases in property's fair market value, and city asserted special benefit in special assessment action based on substantial increases in accessibility, which included safer, lower cost, and shorter travel times for customers, deliveries, and employees. Wis. Stat. Ann. §§ 32.09(3), 66.0703(1)(a). CED Properties, LLC v. City of Oshkosh, 2018 WI 24, 909 N.W.2d 136 (Wis. 2018).

[END OF SUPPLEMENT]

Footnotes

1 Bankruptcy Estate of Lake Geneva Sugar Shack, Inc. v. General Star Indem. Co., 32 F. Supp. 2d 1059 (E.D. Wis. 1999), judgment rev'd on other grounds, 200 F.3d 479 (7th Cir. 2000).

2 International Engine Parts, Inc. v. Feddersen & Co., 64 Cal. App. 4th 345, 75 Cal. Rptr. 2d 178 (2d Dist. 1998).

3 Bankruptcy Estate of Lake Geneva Sugar Shack, Inc. v. General Star Indem. Co., 32 F. Supp. 2d 1059 (E.D. Wis. 1999), judgment rev'd on other grounds, 200 F.3d 479 (7th Cir. 2000); International Engine Parts, Inc. v. Feddersen & Co., 64 Cal. App. 4th 345, 75 Cal. Rptr. 2d 178 (2d Dist. 1998).

4 New Hampshire v. Maine, 532 U.S. 742, 121 S. Ct. 1808, 149 L. Ed. 2d 968 (2001).

5 Zedner v. U.S., 547 U.S. 489, 126 S. Ct. 1976, 164 L. Ed. 2d 749, 46 A.L.R. Fed. 2d 649 (2006); New Hampshire v. Maine, 532 U.S. 742, 121 S. Ct. 1808, 149 L. Ed. 2d 968 (2001); Arkison v. Ethan Allen, Inc., 160 Wash. 2d 535, 160 P.3d 13 (2007).

6 Arkison v. Ethan Allen, Inc., 160 Wash. 2d 535, 160 P.3d 13 (2007).

7 Farmers High Line Canal and Reservoir Co. v. City of Golden, 975 P.2d 189 (Colo. 1999).

8 Wabash Grain, Inc. v. Smith, 700 N.E.2d 234 (Ind. Ct. App. 1998); Vowers & Sons, Inc. v. Strasheim, 254 Neb. 506, 576 N.W.2d 817 (1998); Travelers Property Cas. Corp. v. Jim Walter Homes, Inc., 1998 OK CIV APP 80, 966 P.2d 1190 (Div. 4 1998).

9 Farmers High Line Canal and Reservoir Co. v. City of Golden, 975 P.2d 189 (Colo. 1999).

10 Burger King Corp. v. Barnes, 1 F. Supp. 2d 1367 (S.D. Fla. 1998); Naporano Associates, L.P. v. B & P Builders, 309 N.J. Super. 166, 706 A.2d 1123 (App. Div. 1998).

11 Bogan v. Hodgkins, 166 F.3d 509 (2d Cir. 1999); Chandler v. Samford University, 35 F. Supp. 2d 861 (N.D. Ala. 1999); Farmers High Line Canal and Reservoir Co. v. City of Golden, 975 P.2d 189 (Colo. 1999); People v. Ruppel, 303 Ill. App. 3d 885, 237 Ill. Dec. 21, 708 N.E.2d 824 (4th Dist. 1999).

12 Haley v. Dow Lewis Motors, Inc., 72 Cal. App. 4th 497, 85 Cal. Rptr. 2d 352 (3d Dist. 1999).

13 In re Hill, 332 B.R. 835 (Bankr. M.D. Fla. 2005); Law Offices of Ian Herzog v. Law Offices of Joseph M. Fredrics, 61 Cal. App. 4th 672, 71 Cal. Rptr. 2d 771 (2d Dist. 1998) (application of the doctrine of judicial estoppel is often limited by the requirement that permitting a change of position would be unjust to the other party); Roxas v. Marcos, 89 Haw. 91, 969 P.2d 1209 (1998).

A candidate for county legislature was not judicially estopped from adopting the position that the absentee ballots were invalid, even though the candidate argued the opposite position before the absentee ballots were opened, where the candidate's opponent was not prejudiced when the candidate adopted the opponent's original position, and the record did not establish that the candidate successfully persuaded the trial court to adopt his initial position. Stewart v. Chautauqua County Bd. of Elections, 14 N.Y.3d 139, 897 N.Y.S.2d 704, 924 N.E.2d 812 (2010).

14 Koppers Co., Inc. by Beazer East, Inc. v. Certain Underwriters at Lloyd's London, 993 F. Supp. 358 (W.D. Pa. 1998).

15 Seneca Nation of Indians v. State of N.Y., 26 F. Supp. 2d 555 (W.D. N.Y. 1998), aff'd, 178 F.3d 95 (2d Cir. 1999) (some evidence of misconduct by a party against whom judicial estoppel has been invoked is required for application of the doctrine); Haley v. Dow Lewis Motors, Inc., 72 Cal. App. 4th 497, 85 Cal. Rptr. 2d 352 (3d Dist. 1999); Farmers High Line Canal and Reservoir Co. v. City of Golden, 975 P.2d 189 (Colo. 1999).

16 Blanchette v. School Committee of Westwood, 427 Mass. 176, 692 N.E.2d 21, 124 Ed. Law Rep. 676 (1998).

17 New Hampshire v. Maine, 532 U.S. 742, 121 S. Ct. 1808, 149 L. Ed. 2d 968 (2001); In re Chambers Development Co., Inc., 148 F.3d 214 (3d Cir. 1998); King v. Herbert J. Thomas Memorial Hosp., 159 F.3d 192 (4th Cir. 1998); Johnson v. State, Oregon Dept. of Human Resources, Rehabilitation Div., 141 F.3d 1361 (9th Cir. 1998); Donato v. Metropolitan Life Ins. Co., 230 B.R. 418 (N.D. Cal. 1999); Haley v. Dow Lewis Motors, Inc., 72 Cal. App. 4th 497, 85 Cal. Rptr. 2d 352 (3d Dist. 1999); National Union Fire Ins. Co. of Pittsburgh, Pennsylvania v. John Zink Co., 972 S.W.2d 839 (Tex. App. Corpus Christi 1998); Arkison v. Ethan Allen, Inc., 160 Wash. 2d 535, 160 P.3d 13 (2007).

18 Seneca Nation of Indians v. State of N.Y., 26 F. Supp. 2d 555 (W.D. N.Y. 1998), aff'd, 178 F.3d 95 (2d Cir. 1999); Bankruptcy Estate of Lake Geneva Sugar Shack, Inc. v. General Star Indem. Co., 32 F. Supp. 2d 1059 (E.D. Wis. 1999), judgment rev'd on other grounds, 200 F.3d 479 (7th Cir. 2000).

19 Chandler v. Samford University, 35 F. Supp. 2d 861 (N.D. Ala. 1999); Farmers High Line Canal and Reservoir Co. v. City of Golden, 975 P.2d 189 (Colo. 1999); Tranker v. Figgie Intern., Inc., 231 Mich. App. 115, 585 N.W.2d 337 (1998).

20 Roxas v. Marcos, 89 Haw. 91, 969 P.2d 1209 (1998).

21 Lamonds v. General Motors Corp., 34 F. Supp. 2d 391 (W.D. Va. 1999).

22 Vowers & Sons, Inc. v. Strasheim, 254 Neb. 506, 576 N.W.2d 817 (1998).

23 New Hampshire v. Maine, 532 U.S. 742, 121 S. Ct. 1808, 149 L. Ed. 2d 968 (2001).

24 Cloud v. Northrop Grumman Corp., 67 Cal. App. 4th 995, 79 Cal. Rptr. 2d 544 (2d Dist. 1998).

25 Bankruptcy Estate of Lake Geneva Sugar Shack, Inc. v. General Star Indem. Co., 32 F. Supp. 2d 1059 (E.D. Wis. 1999), judgment rev'd on other grounds, 200 F.3d 479 (7th Cir. 2000).

26 Shockley v. Director, Div. of Child Support Enforcement, Mo. Dept. of Social Services, 980 S.W.2d 173 (Mo. Ct. App. E.D. 1998).

27 Rudd v. Chicago Ass'n for Retarded Citizens, Inc., 35 F. Supp. 2d 1088 (N.D. Ill. 1999).

28 New Hampshire v. Maine, 532 U.S. 742, 121 S. Ct. 1808, 149 L. Ed. 2d 968 (2001).

29 City of New York v. Show World, Inc., 178 Misc. 2d 812, 683 N.Y.S.2d 376 (Sup 1998), aff'd, 258 A.D.2d 284, 685 N.Y.S.2d 49 (1st Dep't 1999), rev'd on other grounds, 94 N.Y.2d 267, 702 N.Y.S.2d 576, 724 N.E.2d 368 (1999).

30 Paixao v. Paixao, 429 Mass. 307, 708 N.E.2d 91 (1999).

31 Arkison v. Ethan Allen, Inc., 160 Wash. 2d 535, 160 P.3d 13 (2007).

32 National Union Fire Ins. Co. of Pittsburgh, Pennsylvania v. John Zink Co., 972 S.W.2d 839 (Tex. App. Corpus Christi 1998).

33 Decker v. Vermont Educational Television, Inc., 13 F. Supp. 2d 569 (D. Vt. 1998).

34 Okland Oil Co. v. Conoco Inc., 144 F.3d 1308, 49 Fed. R. Evid. Serv. 644 (10th Cir. 1998); Seneca Nation of Indians v. State of N.Y., 26 F. Supp. 2d 555 (W.D. N.Y. 1998), aff'd, 178 F.3d 95 (2d Cir. 1999); Ottema v. State ex rel. Wyoming Worker's Compensation Div., 968 P.2d 41 (Wyo. 1998).

35 Gundry Glass Hosp. v. Shalala, 6 F. Supp. 2d 466 (D. Md. 1998), aff'd, 175 F.3d 1014 (4th Cir. 1999); Seneca Nation of Indians v. State of N.Y., 26 F. Supp. 2d 555 (W.D. N.Y. 1998), aff'd, 178 F.3d 95 (2d Cir. 1999); Holzer v. Motorola Lighting, Inc., 295 Ill. App. 3d 963, 230 Ill. Dec. 317, 693 N.E.2d 446 (1st Dist. 1998); Ottema v. State ex rel. Wyoming Worker's Compensation Div., 968 P.2d 41 (Wyo. 1998).

36 Maui Land & Pineapple Co. v. Occidental Chemical Corp., 24 F. Supp. 2d 1083 (D. Haw. 1998).

37 Middleton v. Caterpillar Indus., Inc., 979 So. 2d 53 (Ala. 2007).

End of Document

28 Am. Jur. 2d Estoppel and Waiver § 69

American Jurisprudence, Second Edition | May 2021 Update

Estoppel and Waiver
Romualdo P. Eclavea, J.D.; Eric C. Surette, J.D.

Part One. Estoppel

III. Equitable Estoppel or Estoppel in Pais

B. Elements, Requisites, and Grounds

2. As Related to Party to Be Estopped

f. Inconsistent Positions

§ 69. Changing ground specified for conduct, action, or defense

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Estoppel 63

A party who has given a definite reason for his or her conduct and decision about a matter in controversy cannot, after litigation has begun, change his or her ground and put his or her conduct upon another and a different consideration.[1] Indeed, judicial estoppel generally prevents a party from prevailing in one phase of a case on an argument and then relying on a contradictory argument to prevail in another phase.[2]

However, in a tort action brought against an employer by an injured employee who first filed and then voluntarily withdrew a claim for workers' compensation benefits, it was held that the trial court erred in ruling that the defendant employer was equitably estopped from asserting the workers' compensation tort immunity defense by reason of its prior conduct and in particular its prior denial of the employee's claim for workers' compensation benefits where no prejudice to the employee was shown in that the period of limitations within which she could refile her workers' compensation claim had not expired.[3]

CUMULATIVE SUPPLEMENT

Cases:

That city employee with post-traumatic stress disorder (PTSD) who was terminated from employment after he returned from serving on active duty with Army National Guard had applied for and received social security disability benefits did not judicially estop him from asserting he was a qualified individual with a disability under the ADA; employee asserted that he was not asked

during social security disability process if he could have worked with an accommodation, and employee asserted that, while he was disabled, he could have continued working for city if provided reasonable accommodation. Americans with Disabilities Act of 1990, § 2 et seq., 42 U.S.C.A. § 12101 et seq. Jackson v. City of Birmingham, 364 F. Supp. 3d 1310 (N.D. Ala. 2019).

County employee, who allegedly suffered from variety of symptoms including reduced vision and numbness, adequately explained any facial inconsistencies between her statements made in connection with her Social Security Disability Insurance (SSDI) application and assertions she made in her ADA action against county, and thus employee's statements made before Social Security Administration (SSA) did not judicially estop her from maintaining her ADA claims; possibility of reasonable accommodation had no bearing on SSDI application, such that employee's statement to SSA that she was unable to work was not inconsistent with her ADA claim in which she asserted that she could work with reasonable accommodation, and employee's representations to SSA regarding worsening of her condition took place nearly six months after county allegedly forced her to retire. Americans with Disabilities Act of 1990 § 2 et seq., 42 U.S.C.A. § 12101 et seq. Rossum v. Baltimore County, Maryland, 178 F. Supp. 3d 292 (D. Md. 2016).

An ADA plaintiff who has also applied for disability benefits cannot simply ignore the apparent contradiction that arises out of the earlier disability claim but must proffer a sufficient explanation to defeat a defendant's motion for summary judgment; the explanation must be sufficient to warrant a reasonable juror's concluding that, assuming the truth of, or the plaintiff's good-faith belief in, the earlier statement to the Social Security Administration (SSA), the plaintiff could nonetheless perform the essential functions of her job, with or without reasonable accommodation. Americans with Disabilities Act of 1990, § 2 et seq., 42 U.S.C.A. § 12101 et seq. Barley v. Fox Chase Cancer Center, 46 F. Supp. 3d 565 (E.D. Pa. 2014).

Statements of discharged employee, who was diagnosed with spondylolisthesis, to Social Security Administration (SSA) in support of her application for Social Security Disability Insurance (SSDI) benefits that she voluntarily left her job, and would not have left but for her inability to work, estopped her from claiming in her subsequent Americans with Disabilities Act (ADA) action that accommodation of working from home would have allowed her to perform essential functions of her job, as would support her prima facie case of discrimination under ADA. Social Security Act, § 223(d)(2)(A), 42 U.S.C.A. § 423(d)(2)(A); Americans with Disabilities Act of 1990, § 2 et seq., 42 U.S.C.A. § 12101 et seq. Cavaliere v. Advertising Specialty Institute Inc., 853 F. Supp. 2d 472 (E.D. Pa. 2012).

[END OF SUPPLEMENT]

Footnotes

1 O'Bryan v. Linton, 41 So. 2d 169 (Fla. 1949).

2 Zedner v. U.S., 547 U.S. 489, 126 S. Ct. 1976, 164 L. Ed. 2d 749, 46 A.L.R. Fed. 2d 649 (2006); New Hampshire v. Maine, 532 U.S. 742, 121 S. Ct. 1808, 149 L. Ed. 2d 968 (2001).

3 Stromberg-Carlson v. Jackson, 488 So. 2d 545 (Fla. Dist. Ct. App. 5th Dist. 1986).

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f. Inconsistent Positions

§ 70. As to jurisdiction

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Estoppel 63

One who procures or gives consent to a judgment or decree, even though it is void as beyond the power of the court to pronounce, is estopped from questioning its validity, at least where he or she has obtained a benefit from the act of the court.[1] One who invokes or voluntarily submits to the exercise by a court of its jurisdiction upon a matter of which it has power to take cognizance is estopped from subsequently objecting thereto.[2] However, the fact that a person attempts to invoke the unauthorized jurisdiction of a court does not estop him or her from thereafter challenging its jurisdiction of the subject matter since such jurisdiction must arise by law and not by mere consent of the parties, and this is especially true where the person seeking to invoke unauthorized jurisdiction of the court does not thereby secure any advantage or the adverse party does not suffer any harm.[3]

Footnotes

1 Miles v. Jones, 1946 OK 240, 197 Okla. 684, 173 P.2d 949 (1946); Svatonsky v. Svatonsky, 63 Wash. 2d 902, 389 P.2d 663 (1964).

2 Application of Martin, 76 Idaho 179, 279 P.2d 873, 53 A.L.R.2d 582 (1955); Pulley v. Pulley, 255 N.C. 423, 121 S.E.2d 876 (1961).

3 Jolley v. Martin Bros. Box Co., 158 Ohio St. 416, 49 Ohio Op. 298, 109 N.E.2d 652 (1952) (overruled in part on other grounds by, Anderson v. Richards, 173 Ohio St. 50, 18 Ohio Op. 2d 252, 179 N.E.2d 918, 96 A.L.R.2d 307 (1962)).

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§ 71. As to pleading

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Estoppel 63

As a general rule, a party is bound by allegations or admissions of fact in his or her own pleadings.[1] In other words, he or she may be estopped or precluded by his or her pleadings.[2] The view has been expressed that the theory of estoppel to maintain inconsistent positions in pleading is not applicable unless the previous position was successfully maintained.[3]

Observation:

The doctrine of judicial estoppel prevents the parties from making a mockery of justice by inconsistent pleadings and playing fast and loose with the courts.[4]

Reminder:

The doctrine of judicial estoppel has been held inapplicable to allegedly inconsistent statements made by a plaintiff in her amended complaint.[5]

Footnotes

1 Hodges v. Atlantic Coast Line Railroad Co., 238 F. Supp. 425 (N.D. Ga. 1964), judgment rev'd and remanded on other grounds, 363 F.2d 534 (5th Cir. 1966); Loomis v. Church, 76 Idaho 87, 277 P.2d 561 (1954).

2 Chicago Trust Co. v. Knabb, 142 Fla. 767, 196 So. 200 (1940); J.W. McWilliams Co. v. Travers, 96 Fla. 203, 118 So. 54 (1928).

3 Olin's, Inc. v. Avis Rental Car System of Fla., Inc., 104 So. 2d 508 (Fla. 1958).

4 In re Hill, 332 B.R. 835 (Bankr. M.D. Fla. 2005); Carter v. State, 980 So. 2d 473 (Fla. 2008).

5 § 68.

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§ 72. As to evidence and witnesses; judicial admissions

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West's Key Number Digest

West's Key Number Digest, Estoppel 63

A.L.R. Library

Binding effect, upon party litigant, of testimony of his witnesses at a former trial, 74 A.L.R.2d 521

Under the doctrine of estoppel against inconsistent positions in a judicial or quasi-judicial proceeding, one cannot in the same proceeding rely upon evidence that he or she has brought into the case, and then assail it,[1] although there are some exceptions to, or limitations upon, the rule.[2] A solemn admission in judicio is an estoppel everywhere and forever.[3]

There is also a kind of evidential estoppel that, although it may not amount to complete estoppel in pais, is raised when persons who have spoken or acted one way under one set of circumstances, and with one objective in mind, undertake under other circumstances and when their objective has changed to testimonially give different color to what they formerly said and did.[4]

Estoppel may also arise from withdrawing an objection;[5] thus, a party who has led another to believe that he or she has waived any objection to the relevancy of an exhibit is held estopped from denying its relevancy.[6] An employer that has not sought a

summary judgment on a terminated employee's claims based upon a contractual agreement to pay severance benefits would be precluded from challenging the admission of evidence of a contract at trial on the grounds that it is impermissible evidence of a settlement offer.[7] However, an insurer's use of a police report concerning an insured's rollover accident, as a basis for concluding that the accident did not involve a "phantom vehicle" so as to give rise to underinsured motorist (UIM) coverage, would not estop the insurer from challenging the report's admissibility in a resulting action by the insured motorist; moreover, the motorist cannot show that her failure to authenticate the report resulted from the insurer's pretrial use of it.[8]

Although, on a second trial, a party is not permitted against timely objection to contradict his or her own sworn testimony on a material matter given at the first trial, it has been held that a party is not estopped from offering at a second trial, testimony contradicting the testimony of his or her own witness given at the first trial.[9]

The testimony of a party's expert witness in one proceeding does not, ipso facto, bind the party who retained the witness in another proceeding, by application of the doctrine of judicial estoppel, although in some circumstances it may if the witness is also an agent or employee of the party that hired him or her.[10]

Footnotes

1 Pace v. Assessor of Town of Islip, 252 A.D.2d 88, 682 N.Y.S.2d 447 (2d Dep't 1998).

2 State v. Atwood, 250 N.C. 141, 108 S.E.2d 219, 86 A.L.R.2d 602 (1959) (holding that the fact that the State in a prosecution for murder, in which the defendant claims that the decedent shot himself, offers in evidence the statements of the defendant as to the firing of the pistol in the hands of the deceased has been held not to prevent the State from showing that the facts were different).

3 Lee v. Boyer, 217 Ga. 27, 120 S.E.2d 757, 5 A.L.R.3d 349 (1961).

4 In re Gilmore, 221 B.R. 864 (Bankr. N.D. Ala. 1998).

5 Peterson v. Taylor, 255 Minn. 220, 96 N.W.2d 247 (1959) (withdrawal of objection to exhibit).

6 Ross v. C.I.R., 169 F.2d 483, 7 A.L.R.2d 719 (C.C.A. 1st Cir. 1948).

7 Rasmussen v. Quaker Chemical Corp., 993 F. Supp. 677 (N.D. Iowa 1998).

8 Burmeister v. State Farm Ins. Co., 92 Wash. App. 359, 966 P.2d 921 (Div. 2 1998).

9 Louisville & N.R. Co. v. Johns, 267 Ala. 261, 101 So. 2d 265, 74 A.L.R.2d 499 (1958) (holding modified on other grounds by, McKenzie v. Killian, 887 So. 2d 861 (Ala. 2004)).

10 Horizon Offshore Contractors, Inc. v. Aon Risk Services of Texas, Inc., 283 S.W.3d 53 (Tex. App. Houston 14th Dist. 2009), review denied, (Sept. 25, 2009).

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3. As Related to Party Claiming Estoppel

§ 73. Generally

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Estoppel 52.15 to 60

As related to the party claiming equitable estoppel, the essential elements are a lack of knowledge and of the means of knowledge of the truth as to the facts in question; reliance, in good faith, upon the conduct or statements of the party to be estopped; and action or inaction based thereon of such a character as to change the position or status of the party claiming the estoppel, to his or her injury, detriment, or prejudice.[1]

Footnotes

1 Coomer v. CSX Transp., Inc., 319 S.W.3d 366 (Ky. 2010);
Berrington Corp. v. State Dept. of Revenue, 277 Neb. 765, 765 N.W.2d 448 (2009); Waters-Haskins v. New Mexico Human Services Dept., Income Support Div., 2009-NMSC-031, 146 N.M. 391, 210 P.3d 817 (2009); Gore v. Myrtle/Mueller, 362 N.C. 27, 653 S.E.2d 400 (2007); First Intern. Bank & Trust v. Peterson, 2009 ND 207, 776 N.W.2d 543 (N.D. 2009).
Boyd v. Bellsouth Telephone Telegraph Co., Inc., 369 S.C. 410, 633 S.E.2d 136 (2006).
As to reliance, generally, see § 74.
As to change of position or status, see § 75.
As to injury, detriment or prejudice, see § 76.
As to good faith, see § 77.
As to knowledge or ignorance of facts, see §§ 78, 79.

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§ 74. Belief and reliance; necessity that party be misled

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West's Key Number Digest

West's Key Number Digest, Estoppel 52.15, 55

A requisite element of the doctrine of equitable estoppel is that the party invoking it must show that he or she relied on the other party's conduct to his or her detriment or prejudice.[1] In other words, one of the elements of equitable estoppel is that the person to whom a representation was made or from whom facts were concealed relied and acted upon the representation or concealment to his or her prejudice.[2] To prevail on a claim for equitable estoppel, a party must show that the party to be estopped acted in such a way as to induce reasonable reliance by the other party and that allowing the first party to act contrary to its earlier actions would work to the detriment of the relying party.[3] To establish grounds for equitable estoppel, the plaintiff must plead that he or she relied on the defendant's fraud by either consciously relying on an affirmative misrepresentation or failing to discover fraudulently concealed evidence.[4] Equitable estoppel is concerned with actions by one party that induce a faulty reliance by the other party.[5]

The conduct of the party claiming an estoppel must be considered no less than the conduct of the party sought to be estopped.[6] More specifically, a party seeking to invoke equitable estoppel must show that it has detrimentally relied on the declarations, acts, or representation of the party sought to be estopped[7] and that the reliance was in good faith,[8] reasonable,[9] and justified.[10]

In some jurisdictions, the reliance must be foreseeable by the promisor.[11] The party claiming estoppel must have acted upon the declarations or conduct of the person sought to be estopped and not on his or her own knowledge or judgment.[12] A person may not set up another's acts or conduct as a ground for estoppel unless that person himself or herself has been misled or deceived by such act or conduct.[13]

Consistent with the foregoing principles, a lender cannot be equitably estopped from enforcing the terms of loan agreements for loans that existed before, and therefore that were entered into without reliance upon, the alleged misrepresentation.[14]

Detrimental reliance, which is a necessary element of any claim of equitable estoppel, is not a factor where estoppel cannot be applied as a matter of law.[15]

Detrimental reliance need not be established to invoke the doctrine of quasi estoppel as opposed to equitable estoppel;[16] instead, there must be evidence that it would be unconscionable to permit the offending party to assert allegedly contrary positions.[17]

CUMULATIVE SUPPLEMENT

Cases:

Under Illinois law, "detrimental reliance," for purposes of claim for promissory estoppel, may consist of either an affirmative action or a forbearance based on the promise. Jackson v. Bank of New York, 62 F. Supp. 3d 802 (N.D. Ill. 2014).

Under Illinois law, retail hardware store franchisees did not reasonably rely on franchisor's alleged statements regarding their stores, the suitability of the stores' locations, or purported promises of future financial success, as required to establish their equitable estoppel defense to franchisor's breach of contract claims, where the parties' contracts contained numerous, clear, comprehensive disclaimers pursuant to which franchisees assumed the risks associated with owning and operating their stores. Ace Hardware Corp. v. Landen Hardware, LLC, 883 F. Supp. 2d 739 (N.D. Ill. 2012).

Lack of evidence that mortgage lender, by means of any misrepresentation or concealment, had induced borrower to rely upon fact that maturity date of loan had been orally extended prevented borrower from establishing that lender was equitable estopped from enforcing provision in mortgage loan agreement specifying that any modifications had to be in writing. In re East End Development, LLC, 555 B.R. 138 (Bankr. E.D. N.Y. 2016).

Strictly speaking, equitable estoppel applies only where a party has made false or misleading representations of fact and the other party justifiably relied on the representation. MB Industries, LLC v. CNA Ins. Co., 74 So. 3d 1173 (La. 2011).

Even if lender's description of debt on IRS form 1099 C as a "FORGIVEN DEBT" was inconsistent with its filing of a deficiency action against borrower, it was not reasonable for borrower to rely on that language in paying income tax on the full $250,000, as an element of an estoppel defense, without some investigation by borrower into the implications of the form; the form itself contained ample indication that the mere receipt of the form did not mean that a tax was due by specifically informing the borrower that as a debtor, he may not be required to include all of the canceled debt as income. ZB, N.A. v. Crapo, 2017 UT 12, 394 P.3d 338 (Utah 2017).

[END OF SUPPLEMENT]

Footnotes

1 Sullivan v. Wolf Creek Collieries, 294 S.W.3d 474 (Ky. Ct. App. 2009).

2 Miller v. Callear, 140 Idaho 213, 91 P.3d 1117 (2004).

3 IHC Health Services, Inc. v. D & K Management, Inc., 2003 UT 5, 73 P.3d 320 (Utah 2003).

4 Kaiser v. Umialik Ins., 108 P.3d 876 (Alaska 2005).

5 Celentano v. Oaks Condominium Ass'n, 265 Conn. 579, 830 A.2d 164 (2003).

6 Smith v. Smith, 265 N.C. 18, 143 S.E.2d 300 (1965).

As to the conduct of the estopped party, generally, see §§ 48 to 50.

7 Reform Party of Alabama v. Bennett, 18 F. Supp. 2d 1342 (M.D. Ala. 1998), order aff'd, 158 F.3d 1171 (11th Cir. 1998); VonFeldt v. Stifel Financial Corp., 714 A.2d 79 (Del. 1998); Federal Home Loan Mortg. Corp. v. Transamerica Ins. Co., 89 Haw. 157, 969 P.2d 1275 (1998); Fitzgerald v. City of Bangor, 1999 ME 50, 726 A.2d 1253 (Me. 1999); Otero v. City of Albuquerque, 125 N.M. 770, 1998-NMCA-137, 965 P.2d 354 (Ct. App. 1998); Gore v. Myrtle/Mueller, 362 N.C. 27, 653 S.E.2d 400 (2007).

Gilmartin v. KVTV-Channel 13, 985 S.W.2d 553 (Tex. App. San Antonio 1998).

8 Hoar v. Aetna Cas. and Sur. Co., 1998 OK 95, 968 P.2d 1219 (Okla. 1998).

9 Arenberg v. Central United Life Ins. Co., 18 F. Supp. 2d 1167 (D. Colo. 1998); Southern California Edison Co. v. U.S., 43 Fed. Cl. 107 (1999), rev'd on other grounds, 226 F.3d 1349 (Fed. Cir. 2000); Rodney F. v. Karen M., 61 Cal. App. 4th 233, 71 Cal. Rptr. 2d 399 (2d Dist. 1998), as modified, (Mar. 5, 1998); Federal Home Loan Mortg. Corp. v. Transamerica Ins. Co., 89 Haw. 157, 969 P.2d 1275 (1998); Lesniewski v. W.B. Furze Corp., 308 N.J. Super. 270, 705 A.2d 1243 (App. Div. 1998); Wisznia v. State, Human Services Dept., 1998-NMSC-011, 125 N.M. 140, 958 P.2d 98 (1998); Gilmartin v. KVTV-Channel 13, 985 S.W.2d 553 (Tex. App. San Antonio 1998).

10 Alexander v. CIGNA Corp., 991 F. Supp. 427 (D.N.J. 1998), judgment aff'd, 172 F.3d 859 (3d Cir. 1998); JLG Concrete Products Co., Inc. v. City of Grenada, 722 So. 2d 1283 (Miss. Ct. App. 1998); Gilmartin v. KVTV-Channel 13, 985 S.W.2d 553 (Tex. App. San Antonio 1998).

11 Texas Property and Cas. Ins. Guar. Association/Southwest Aggregates, Inc. v. Southwest Aggregates, Inc., 982 S.W.2d 600 (Tex. App. Austin 1998).

12 Cobb County Rural Elec. Membership Corporation v. Board of Lights & Water Works of Marietta, 211 Ga. 535, 87 S.E.2d 80 (1955).

13 Rockwood Bank v. Camp, 984 S.W.2d 868 (Mo. Ct. App. E.D. 1999).

14 Chrysler Credit Corp. v. Bert Cote's L/A Auto Sales, Inc., 1998 ME 53, 707 A.2d 1311 (Me. 1998).

15 Dukes v. Board of Trustees for Police Officers Pension Fund, 280 Ga. 550, 629 S.E.2d 240 (2006).

16 Long v. Turner, 134 F.3d 312 (5th Cir. 1998); Whitacre Partnership v. Biosignia, Inc., 358 N.C. 1, 591 S.E.2d 870 (2004).

17 Atwood v. Smith, 143 Idaho 110, 138 P.3d 310 (2006).

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§ 75. Change of position or status

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West's Key Number Digest

West's Key Number Digest, Estoppel 52.15, 56

Estoppel is based upon the theory that where one has by his or her conduct induced another to change his or her position to his or her damage, disadvantage, or detriment, he or she is estopped from benefiting by such conduct.[1] Not only must the party claiming an estoppel have believed and relied upon the words or conduct of the other party but also he or she must have been thereby induced to act,[2] or to refrain from acting,[3] in such a manner and to such an extent as to change his or her position or status from that which he or she would otherwise have occupied.[4] The fact that a party changed its position for the worse is a necessary component of an equitable estoppel defense.[5] Wrongful or unconscionable conduct is generally an element of estoppel, but an estoppel may arise even when there is no intent to mislead if the actions of one party cause a prejudicial change in the conduct of the other.[6] In order to create an estoppel, the party pleading it must have suffered a loss of a substantial character or must have been induced to alter his or her position for the worse in some material respect.[7] However, a conscious change of position is not necessary since this element of estoppel is satisfied where a person's position is changed for him or her to his or her detriment and prejudice by the acts of the other party.[8] Thus, a former employer may not maintain a counterclaim of promissory and equitable estoppel against a former employee, on the ground that the employee allegedly violated a settlement agreement in an underlying unlawful-termination action, regardless of whether the employee had made any promises or misrepresentations in connection with settlement discussions, absent a showing that the employer took any action that it otherwise would not have taken in reliance on such promises or misrepresentations; the cost of defending itself was not incurred by the employer in reliance on any promise or representation made by the employee.[9] Similarly, the buyers of a recreational vehicle and their financing company cannot equitably estop a bank from asserting a statute prohibiting the sale of a motor vehicle without a transfer of a certificate of ownership to render the sale void, absent proof that they took action in reliance on the bank's alleged

acquiescence in the dealer's past fraudulent acts; at the time of sale to the buyers, neither they nor their financing company were even aware of the bank's involvement in the transaction as the dealer's financing company.[10]

CUMULATIVE SUPPLEMENT

Cases:

While detrimental reliance on a misrepresentation, as element of federal common law equitable estoppel, can still exist when a misrepresentation causes the plaintiff to refrain from taking mitigating action, the plaintiff must still assert a causal link and show damages from the misrepresentation. Dawkins v. Fulton County Government, 733 F.3d 1084 (11th Cir. 2013).

[END OF SUPPLEMENT]

Footnotes

1 In re Cecere's Estate, 17 Ohio Misc. 101, 46 Ohio Op. 2d 134, 242 N.E.2d 701 (Prob. Ct. 1968).

2 Saaf v. Duluth Police Pension Relief Ass'n, 240 Minn. 60, 59 N.W.2d 883 (1953); Concord Oil Co. v. Alco Oil & Gas Corp., 387 S.W.2d 635 (Tex. 1965).

3 Saaf v. Duluth Police Pension Relief Ass'n, 240 Minn. 60, 59 N.W.2d 883 (1953).

4 Moen v. Minzel, 79 Idaho 228, 313 P.2d 1079 (1957); Wisconsin Telephone Co. v. Lehmann, 274 Wis. 331, 80 N.W.2d 267 (1957).

5 Dickerson v. Longoria, 414 Md. 419, 995 A.2d 721 (2010).

6 Creveling v. Government Employees Ins. Co., 376 Md. 72, 828 A.2d 229 (2003).

7 Allen v. Neal, 217 Tenn. 181, 396 S.W.2d 344 (1965).

8 U.S. Fidelity & Guaranty Co. v. Rice, 241 Miss. 307, 130 So. 2d 924 (1961).

9 Kelley v. Maine Eye Care Associates, P.A., 37 F. Supp. 2d 47 (D. Me. 1999).

10 Rockwood Bank v. Camp, 984 S.W.2d 868 (Mo. Ct. App. E.D. 1999).

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§ 76. Loss, injury, detriment, or prejudice

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West's Key Number Digest

West's Key Number Digest, Estoppel 52.15, 58

Equitable estoppel rests largely upon injury or prejudice to the rights of one who asserts it.[1] In order for a plaintiff to prove that he or she changed his or her position to his or her detriment in reliance on a representation from another party, the plaintiff must prove that he or she suffered damages not adequately compensated by the defendant.[2] In other words, injury, detriment, or prejudice to the party claiming the estoppel is one of the essential elements of an equitable estoppel, or estoppel in pais.[3] The element of material prejudice to the defendant that is required to establish the defense of equitable estoppel can be shown, as with laches, by an altered economic status or by the loss of evidence.[4] Since the function and purpose of the doctrine of estoppel are the prevention of fraud and injustice, there can be no estoppel where there is no loss, injury, damage, detriment, or prejudice to the party claiming it.[5] Moreover, the injury or prejudice involved must be actual and material or substantial and not merely technical or formal.[6] The rule that estoppel arises only where there is prejudice or the like applies whether the estoppel is based upon words or conduct.[7]

There is authority holding that an alternative to detriment or prejudice to the party claiming the estoppel is the receipt of a benefit by the party against whom the estoppel is claimed.[8]

Footnotes

1 State v. Raymond, 254 Iowa 828, 119 N.W.2d 135 (1963); Virginia Const. Corp. v. Fairman, 39 N.J. 61, 187 A.2d 1 (1962).

2 Babkow v. Morris Bart, P.L.C., 726 So. 2d 423 (La. Ct. App. 4th Cir. 1998).

3 Level 3 Communications, Inc. v. Federal Ins. Co., 168 F.3d 956 (7th Cir. 1999); State ex rel. Holleman v. Stafford, 584 N.W.2d 242 (Iowa 1998); Allen v. Neal, 217 Tenn. 181, 396 S.W.2d 344 (1965); Concord Oil Co. v. Alco Oil & Gas Corp., 387 S.W.2d 635 (Tex. 1965).

The doctrines of equitable estoppel did not require the enforcement of a life-insurance contract obtained through material misrepresentations on the application, although issuance of the policy may have reasonably induced reliance, in light of lack of any evidence that the applicant, who died two months after obtaining the policy, could have or would have obtained insurance from another company. Harper v. Fidelity and Guar. Life Ins. Co., 2010 WY 89, 234 P.3d 1211 (Wyo. 2010).

4 Altech Controls Corp. v. E.I.L. Instruments, Inc., 33 F. Supp. 2d 546 (S.D. Tex. 1998).

5 Associated Creditors' Agency v. Wong, 216 Cal. App. 2d 61, 30 Cal. Rptr. 705 (1st Dist. 1963); State v. Raymond, 254 Iowa 828, 119 N.W.2d 135 (1963); U.S. Fidelity & Guaranty Co. v. Rice, 241 Miss. 307, 130 So. 2d 924 (1961).

A vendor of real estate subject to mortgage suffered no detriment from a real-estate closing agent's failure to discover and pay the mortgage and had no equitable estoppel defense to the agent's subrogation claim after indemnifying the title insurer. Hill v. Cross Country Settlements, LLC, 402 Md. 281, 936 A.2d 343 (2007).

6 State v. Raymond, 254 Iowa 828, 119 N.W.2d 135 (1963); Boston & Maine R. R. v. Hannaford Bros. Co., 144 Me. 306, 68 A.2d 1 (1949).

7 Ames Trust and Sav. Bank v. Reichardt, 254 Iowa 1272, 121 N.W.2d 200, 7 A.L.R.3d 900 (1963).

8 State v. Raymond, 254 Iowa 828, 119 N.W.2d 135 (1963).

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§ 77. Innocence and good faith

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West's Key Number Digest

West's Key Number Digest, Estoppel 52.15, 59

The conduct of both parties must be weighed in the balance of equity, and the party claiming estoppel, no less than the party sought to be estopped, must have conformed to strict standards of equity with regard to the matter at issue.[1] Fundamentally, the doctrine of estoppel is for the protection of innocent persons, and as a rule, only the innocent may invoke it.[2] Those who are not innocent, such as mere trespassers, may not assert an estoppel.[3]

In order for the court to invoke the estoppel principle, the party claiming injury must show that it acted in good faith.[4] Since the doctrine of estoppel in pais is available only for the protection of claims made in good faith,[5] the party setting up an estoppel is himself or herself bound to the exercise of good faith in the transaction[6] and in his or her reliance upon the words or conduct of the other party.[7] The utmost good faith is presupposed in making a claim in the application of the doctrine of equitable estoppel,[8] and consistent with the requirement of good faith, estoppel will not be invoked in favor of a party whose own omissions or inadvertence contributed to the problem.[9] An estoppel cannot arise in favor of one who has been guilty of contributory negligence.[10] Where the conduct asserted as the basis for an estoppel was brought about or directly encouraged by the party claiming the estoppel, no estoppel is created.[11] No one can base an estoppel upon an act of the opposite party induced by his or her own fraud.[12] Accordingly, in an action by a physician objecting to his forced retirement from a partnership that operated a hospital and medical clinic, the trial court did not err in disregarding the jury's finding that the partnership was estopped from asserting its right to force the physician's retirement where another jury answers to the specific issues amounted to a finding that

the physician had unclean hands in his dealings with the partnership, since one with unclean hands cannot rely on the equitable defense of estoppel, thus, the finding of unclean hands removed any legal significance to the jury finding on estoppel.[13]

CUMULATIVE SUPPLEMENT

Cases:

Even where an aggrieved party is estopped from taking a subsequent inconsistent position under a contract due to quasi-estoppel, the party on the other side of the agreement is not categorically absolved of its unlawful acts during the formation of that same contract. Hester v. Hubert Vester Ford, Inc., 767 S.E.2d 129 (N.C. Ct. App. 2015).

[END OF SUPPLEMENT]

Footnotes

1 Creech v. Melnik, 347 N.C. 520, 495 S.E.2d 907 (1998).

2 Jefferson Life & Cas. Co. v. Johnson, 238 Miss. 878, 120 So. 2d 160 (1960).

3 Jacobs v. Perry, 135 Colo. 550, 313 P.2d 1008 (1957).

4 In re Andover Togs, Inc., 231 B.R. 521 (Bankr. S.D. N.Y. 1999).

5 Thorp Finance Corp. v. Le Mire, 264 Wis. 220, 58 N.W.2d 641, 44 A.L.R.2d 189 (1953).

6 Hines v. Donovan, 101 N.H. 239, 139 A.2d 884 (1958); City of Jamestown v. Miemietz, 95 N.W.2d 897 (N.D. 1959).

7 Hines v. Donovan, 101 N.H. 239, 139 A.2d 884 (1958); Thorp Finance Corp. v. Le Mire, 264 Wis. 220, 58 N.W.2d 641, 44 A.L.R.2d 189 (1953).

8 Singewald v. Girden, 37 Del. Ch. 252, 139 A.2d 838 (1958).

9 In re Letourneau, 168 Vt. 539, 726 A.2d 31 (1998).

10 El Paso Nat. Bank v. Southwest Numismatic Inv. Group, Ltd., 548 S.W.2d 942 (Tex. Civ. App. El Paso 1977).

11 Bradford v. Western Oldsmobile, Inc., 222 Or. 440, 353 P.2d 232 (1960).

12 Bradford v. Western Oldsmobile, Inc., 222 Or. 440, 353 P.2d 232 (1960).

13 Hughes v. Aycock, 598 S.W.2d 370 (Tex. Civ. App. Houston 14th Dist. 1980), writ refused n.r.e., (Jan. 14, 1981).

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§ 78. Knowledge or ignorance of facts

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West's Key Number Digest

West's Key Number Digest, Estoppel 52.15, 54

In order to support equitable estoppel, the party asserting estoppel must have had no knowledge[1] or means of knowing the true facts[2] or is not chargeable with notice of those facts.[3] The party asserting equitable estoppel not only must lack actual knowledge of the truth but also lack a readily available means of knowledge as to the truth.[4] The courts are hesitant to allow an estoppel in those cases where the party claiming to have been ignorant of the facts had access to the correct information.[5] The party asserting estoppel must show an absence of any convenient and available means of acquiring such knowledge[6] since obviously, one who has full knowledge of the facts cannot rely in good faith upon the words or conduct of another that are inconsistent with the truth; hence, ignorance of the truth as to the matter invoked is generally a prerequisite to the right to assert an estoppel in pais.[7]

Consistent with the foregoing principles, an ex-wife's failure to record a grant deed to a real property awarded to her pursuant to a divorce decree and settlement agreement, until 13 years after the award, would not estop her from claiming title to the property as against the ex-husband's judgment creditors who had a means of acquiring knowledge about the title to the property.[8] Likewise, a parent corporation may not be equitably estopped, in an employment-discrimination action brought by the plaintiff who was a former employee of the subsidiary, from denying that it was the plaintiff's employer, as the plaintiff could not reasonably claim ignorance of the fact that the subsidiary was her employer, where the plaintiff applied for employment with the subsidiary, received her paycheck from the subsidiary, reported only to the subsidiary's employees, and personally named the subsidiary as her employer on medical and employment applications.[9] On the other hand, a finding that a president and majority shareholder of a corporation had actual or constructive knowledge of transactions in which the corporate vice president had improperly retained corporate funds, and thus is estopped from asserting a claim for the retained funds against the vice

president's estate following her death, is not clearly erroneous where the president was in the corporate offices every day except during an extended vacation each winter, had full access to all corporate records, and had facilitated the purchase of vehicles through the corporation for the vice president and her family.[10]

It is not universally true, however, that no estoppel will arise when the party to whom the representation is made has knowledge as to the truth of all the facts.[11] The owner of a known right or title may by his or her representations, acts, or silence so lead another to act in the belief that the owner has waived, surrendered, or abandoned his or her right or title that he or she will be estopped from asserting it to the injury of one who has changed his or her position in reliance upon the owner's representations, acts, or silence.[12] Moreover, there is some authority to the effect that the knowledge that the facts are otherwise than as represented, which will preclude a representation from forming the basis of an estoppel, must be actual as distinguished from merely constructive knowledge.[13]

Observation:

A claimant may plead equitable estoppel in cases where he or she could not have known of his or her legal rights during the time frame set by the statute of limitations on claims against the United States in the court of federal claims.[14]

On the other hand, the court cannot apply the doctrine of equitable estoppel in a case in which the party requesting the relief claims ignorance of the laws when such ignorance of the law is the primary cause of his or her need for such relief.[15]

CUMULATIVE SUPPLEMENT

Cases:

Civil engineering firm's former employee who started employment with firm's competitor was not equitably estopped from obtaining dissolution of preliminary injunction in favor of firm for violation of non-competition agreement; while firm might not have had knowledge of extent of violations of agreement, it was aware of at least three or four instances that employee had interaction with firm's clients at events or outings, and, thus, firm failed to establish lack of knowledge sufficient to equitably estop employee from proceeding on his motion to dissolve injunction. Hannum Wagle & Cline Engineering, Inc. v. American Consulting, Inc., 64 N.E.3d 863 (Ind. Ct. App. 2016).

The party asserting the defense of equitable estoppel must have (1) a lack of knowledge and the means of knowledge as to the real facts in question, and (2) relied upon the conduct of the party sought to be estopped to his prejudice. Trillium Ridge Condominium Ass'n, Inc. v. Trillium Links & Village, LLC, 764 S.E.2d 203 (N.C. Ct. App. 2014).

Guarantor of line of credit obtained by debtor, a printing business, for office supplies, failed to demonstrate that he lacked knowledge of how to terminate his guaranty and lacked the means of obtaining that knowledge, as required to prevail on his equitable estoppel claim; means of termination were unambiguously outlined in the guaranty agreement. Mac Papers, Inc. v. Genesis Press, Inc., 426 S.C. 393, 826 S.E.2d 874 (Ct. App. 2019).

[END OF SUPPLEMENT]

Footnotes

1 State ex rel. Chemco Industries, Inc. v. Employers Mut. Cas. Co., 303 Ill. App. 3d 898, 237 Ill. Dec. 184, 708 N.E.2d 1224 (4th Dist. 1999); Agrex, Inc. v. City of Superior, 7 Neb. App. 237, 581 N.W.2d 428 (1998); Overhulse Neighborhood Ass'n v. Thurston County, 94 Wash. App. 593, 972 P.2d 470 (Div. 2 1999).

2 State ex rel. Chemco Industries, Inc. v. Employers Mut. Cas. Co., 303 Ill. App. 3d 898, 237 Ill. Dec. 184, 708 N.E.2d 1224 (4th Dist. 1999); Agrex, Inc. v. City of Superior, 7 Neb. App. 237, 581 N.W.2d 428 (1998).

3 Agrex, Inc. v. City of Superior, 7 Neb. App. 237, 581 N.W.2d 428 (1998).
As to knowledge of facts required of party to be estopped, see § 44.

4 Arthur v. Pierre Ltd., 2004 MT 303, 323 Mont. 453, 100 P.3d 987 (2004).

5 Story Bed & Breakfast, LLP v. Brown County Area Plan Com'n, 819 N.E.2d 55 (Ind. 2004).

6 Overhulse Neighborhood Ass'n v. Thurston County, 94 Wash. App. 593, 972 P.2d 470 (Div. 2 1999).

7 Cothran v. South Carolina Nat. Bank of Charleston, 242 S.C. 80, 130 S.E.2d 177 (1963); Citizens State Bank v. Travelers Indem. Co., 7 Wis. 2d 451, 96 N.W.2d 834 (1959).

8 Erway v. Deck, 1999 ND 7, 588 N.W.2d 862 (N.D. 1999).

9 Laird v. Capital Cities/ABC, Inc., 68 Cal. App. 4th 727, 80 Cal. Rptr. 2d 454 (3d Dist. 1998).

10 Fisher v. Estate of Haley, 695 N.E.2d 1022 (Ind. Ct. App. 1998).

11 Jacobs v. Perry, 135 Colo. 550, 313 P.2d 1008 (1957); Pederson v. Federal Land Bank of St. Paul, 72 N.W.2d 227 (N.D. 1955).

12 Reichert v. Reichert, 77 S.D. 258, 90 N.W.2d 403 (1958).
As to estoppel by promise or representation as to intended abandonment of existing rights, see § 53.

13 McDonald v. Burke, 288 S.W.2d 363 (Ky. 1955) (stating that constructive notice does not necessarily prevent a person from relying on estoppel).

14 Jackson v. U.S., 55 Fed. Cl. 157 (2003).

15 Celentano v. Oaks Condominium Ass'n, 265 Conn. 579, 830 A.2d 164 (2003).

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§ 79. Knowledge or ignorance of facts—Diligence

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West's Key Number Digest

West's Key Number Digest, Estoppel 52.15, 54

A requirement that the moving party exercise due diligence to learn the truth of a matter relied upon is incorporated into the concept of reasonable reliance on misrepresentation supporting an estoppel claim.[1] One with knowledge of the truth or the means by which with reasonable diligence he or she could acquire knowledge cannot claim to have been misled as required for equitable estoppel.[2] One who relies on estoppel must have exercised such reasonable diligence as circumstances require, and he or she cannot invoke estoppel if he or she conducted himself or herself with careless indifference to the means of information reasonably at hand or ignored highly suspicious circumstances that should have warned him or her of the danger of loss.[3] One who claims the benefit of an estoppel on the ground that he or she has been misled by the representations of another must not have been misled through his or her own want of reasonable care and circumspection.[4] Thus, a person who claims an estoppel must show that he or she has exercised due diligence to know the truth, and that he or she not only did not know the true state of things but also lacked any reasonably available means of acquiring knowledge.[5] A party asserting estoppel cannot disregard obvious facts, or neglect to seek information that is easily accessible, and then charge his or her ignorance to others.[6] A party may not invoke the doctrine of estoppel if he or she conducts himself or herself with careless indifference to means of information reasonably at hand or ignores highly suspicious circumstances.[7] Information that is easily obtained by the party asserting estoppel does not satisfy the requirements of equitable estoppel.[8] Good faith is generally regarded as requiring the exercise of reasonable diligence to learn the truth,[9] and accordingly, estoppel is denied where the party claiming it has been put on inquiry as to the truth[10] and had available means for ascertaining it,[11] at least where actual fraud has not been practiced on the party claiming the estoppel.[12]

Ordinarily, the courts refuse to give effect to an estoppel where the parties have been equally well informed as to the essential facts or where the means of knowledge were equally open to them,[13] at least in the absence of very persuasive circumstances.[14] Where the situation is such that it is a person's duty to speak, as where inquiries are made of him or her, or where, instead of merely remaining silent, he or she does some positive affirmative act that would naturally have the effect of misleading or deceiving one, then the mere fact that the truth can be ascertained by an examination of the public records does not prevent the operation of an estoppel against him or her.[15]

Footnotes

1 J.G.M.C.J. Corp. v. C.L.A.S.S., Inc., 155 N.H. 452, 924 A.2d 400 (2007).

2 Boyd v. Bellsouth Telephone Telegraph Co., Inc., 369 S.C. 410, 633 S.E.2d 136 (2006).

3 Shorter v. Tulsa Used Equipment and Indus. Engine Services, 2006 OK 72, 148 P.3d 864 (Okla. 2006).

4 Peek v. Wachovia Bank & Trust Co., 242 N.C. 1, 86 S.E.2d 745 (1955).

5 Celentano v. Oaks Condominium Ass'n, 265 Conn. 579, 830 A.2d 164 (2003).

6 State ex rel. Chemco Industries, Inc. v. Employers Mut. Cas. Co., 303 Ill. App. 3d 898, 237 Ill. Dec. 184, 708 N.E.2d 1224 (4th Dist. 1999).

7 In Interest of Moragas, 972 S.W.2d 86 (Tex. App. Texarkana 1998).

8 Wolfe v. Bennett PS & E, Inc., 95 Wash. App. 71, 974 P.2d 355 (Div. 2 1999).

9 Hampton v. Paramount Pictures Corp., 279 F.2d 100, 84 A.L.R.2d 454 (9th Cir. 1960); Citizens State Bank v. Travelers Indem. Co., 7 Wis. 2d 451, 96 N.W.2d 834 (1959).

10 Peek v. Wachovia Bank & Trust Co., 242 N.C. 1, 86 S.E.2d 745 (1955); Citizens State Bank v. Travelers Indem. Co., 7 Wis. 2d 451, 96 N.W.2d 834 (1959).

11 Cothran v. South Carolina Nat. Bank of Charleston, 242 S.C. 80, 130 S.E.2d 177 (1963); Monahan v. Wisconsin Dept. of Taxation, 22 Wis. 2d 164, 125 N.W.2d 331 (1963).
As to the application of this principle in respect of the title of real property, see § 101.

12 Peek v. Wachovia Bank & Trust Co., 242 N.C. 1, 86 S.E.2d 745 (1955); Monahan v. Wisconsin Dept. of Taxation, 22 Wis. 2d 164, 125 N.W.2d 331 (1963).

13 World of Food, Inc. v. New York World's Fair 1964-1965 Corp., 22 A.D.2d 278, 254 N.Y.S.2d 658 (1st Dep't 1964); Cothran v. South Carolina Nat. Bank of Charleston, 242 S.C. 80, 130 S.E.2d 177 (1963); Monahan v. Wisconsin Dept. of Taxation, 22 Wis. 2d 164, 125 N.W.2d 331 (1963).

14 McAlister v. McAlister, 254 Miss. 877, 183 So. 2d 513 (1966); Town of Glenrock v. Abadie, 71 Wyo. 414, 259 P.2d 766 (1953).

15 Thompson v. Gaudette, 148 Me. 288, 92 A.2d 342 (1952).

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Research References

West's Key Number Digest

West's Key Number Digest, Estoppel 101

A.L.R. Library

A.L.R. Index, Collateral Estoppel
A.L.R. Index, Equitable Estoppel
A.L.R. Index, Estoppel and Waiver
A.L.R. Index, Promissory Estoppel
West's A.L.R. Digest, Estoppel 101

Trial Strategy

Circumstances Establishing Equitable Defense to Breach of Restrictive Covenant, 42 Am. Jur. Proof of Facts 3d 463

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West's Key Number Digest, Estoppel 101

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Forms

Am. Jur. Pleading and Practice Forms, Estoppel and Waiver § 9 (Answer in action to quiet title alleging vendee was induced to believe vendor was owner of real property)

Although the courts are more reluctant to give effect to estoppels when they affect the title to real estate than in other instances,[1] title to land or real property may pass by equitable estoppel,[2] which takes the title to the land from one person and vests it in another when justice so requires.[3]

Observation:

By an intentional misrepresentation, misleading conduct, or wrongful concealment, a person may preclude himself or herself from asserting his or her legal title to land or from enforcing an encumbrance on, or maintaining an interest in, real estate.[4] Also, with respect to equitable estoppel that affects the title to real estate, there must be the express intention to deceive or such careless and culpable negligence as amounts to constructive fraud.[5]

A mere trespasser may not estop the owner from asserting his or her title in a court of law or equity.[6]

CUMULATIVE SUPPLEMENT

Cases:

Doctrine of equitable estoppel may be invoked by an innocent purchaser taking void deed to property, in spite of the fact that ordinarily a forged instrument cannot carry title. WFG National Title Insurance Company v. Wells Fargo Bank, N.A. as Trustee for Park Place Securities, Inc. Asset-Backed Pass-Through Certificates, Series 2005-WCW2, 51 Cal. App. 5th 881, 264 Cal. Rptr. 3d 717 (2d Dist. 2020), review denied, (Oct. 21, 2020).

Purported owner of foreclosed property was not equitably estopped from asserting title to property in quiet title action against subsequent purchaser, where owner took no action to lead purchaser to believe he was entitled to disputed property, and thus, owner was entirely blameless. Gens v. White, 791 S.E.2d 48 (Ga. 2016).

[END OF SUPPLEMENT]

Footnotes

1 Kokomo Veterans, Inc. v. Schick, 439 N.E.2d 639 (Ind. Ct. App. 1982) (courts are reluctant to base their decisions on equitable estoppel in cases involving the title to real property as to do so would tend to the insecurity of titles if they were allowed to be affected by parol evidence of a light or doubtful character); Blanchard v. Naquin, 476 So. 2d 520 (La. Ct. App. 1st Cir. 1985); O'Toole v. Yunghans, 211 Neb. 852, 320 N.W.2d 768 (1982) (one may not acquire title to real estate by estoppel).

2 Nelson v. Wagner, 108 Idaho 570, 700 P.2d 973 (Ct. App. 1985); Gleason v. Tompkins, 84 Misc. 2d 174, 375 N.Y.S.2d 247 (Sup 1975); Friedman v. Olson, 586 S.W.2d 957 (Tex. Civ. App. Eastland 1979), writ refused n.r.e., (Apr. 2, 1980).

3 Phar-Crest Land Corp. v. Therber, 251 Ind. 674, 244 N.E.2d 644 (1969); Poksyla v. Sundholm, 259 Minn. 125, 106 N.W.2d 202 (1960).

4 Hutter v. Weiss, 132 Ind. App. 244, 177 N.E.2d 339 (1961); Poksyla v. Sundholm, 259 Minn. 125, 106 N.W.2d 202 (1960).

5 Moorman v. Blackstock, Inc., 276 Va. 64, 661 S.E.2d 404 (2008).

6 Jacobs v. Perry, 135 Colo. 550, 313 P.2d 1008 (1957).

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1. In General

§ 81. Recognized in equity but not at law

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West's Key Number Digest

West's Key Number Digest, Estoppel 101

In some jurisdictions, equitable estoppel is recognized at law as transferring the legal title to land when the following circumstances are present:

- there is conduct—acts, language, or silence—amounting to a representation or a concealment of the material facts
- the facts are known to the party to be estopped at the time of his or her conduct or the circumstances are such that the knowledge of them is necessarily imputed to him or her
- the truth concerning the facts is unknown to the party claiming the benefit of the estoppel at the time when the conduct was engaged in and at the time when it was acted upon
- the conduct was done with the intention, or at the expectation, that it will be acted upon by the other party or under such circumstances that it is both natural and probable that it would be acted upon
- the conduct was relied upon by the other party, and thus, relying, he or she was led to act upon it
- he or she acted upon the other's conduct so as to change his or her position for the worse[1]

Footnotes

1 Jacobs v. Perry, 135 Colo. 550, 313 P.2d 1008 (1957); Barrow v. Barrow, 220 N.C. 70, 16 S.E.2d 460 (1941).
As to the elements of equitable estoppel, generally, see § 89.

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1. In General

§ 82. What acts or conduct support estoppel

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West's Key Number Digest

West's Key Number Digest, Estoppel 101

An owner may be estopped from asserting his or her title to realty when by his or her renunciation or disclaimer of title he or she induced another to believe and act thereon to his or her detriment.[1] Also, an estoppel is created by a letter or series of letters in which all intention to assert a lien against a purchaser is disavowed.[2] The owner may also be estopped by accepting the proceeds of a sale, knowing the facts, or by retaining the proceeds after learning the truth.[3]

The owner of land may create an easement by a parol agreement or representation that, if acted on by others creates an estoppel in pais.[4]

The voluntary payment of taxes on land by one without any record title and without notice to the real owner, who immediately protests in a proper manner, does not estop the latter from asserting his or her ownership,[5] nor is the owner estopped from setting up title by recognizing a lien on the property.[6]

Footnotes

1 Holsteen v. Thompson, 169 N.W.2d 554 (Iowa 1969); Thom v. Thom, 208 Minn. 461, 294 N.W. 461 (1940).

2 Roberts v. Friedell, 218 Minn. 88, 15 N.W.2d 496 (1944).

3 Moore v. Rochester Weaver Mining Co., 42 Nev. 164, 174 P. 1017, 19 A.L.R. 830 (1918); Marshall v. McDermitt, 79 W. Va. 245, 90 S.E. 830 (1916).

4 Exxon Corp. v. Schutzmaier, 537 S.W.2d 282 (Tex. Civ. App. Beaumont 1976).

5 Loughran v. Gorman, 256 Ill. 46, 99 N.E. 886 (1912).

6 Groover v. Simmons, 163 Ga. 778, 137 S.E. 237 (1927).

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2. Estoppel by Silence or Nondisclosure of Interest

a. In General

§ 83. Generally

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West's Key Number Digest

West's Key Number Digest, Estoppel 101

Generally, the holder of an estate or interest in real property who remains silent regarding his or her rights when he or she knows that another party is undertaking to sell, mortgage, or otherwise transfer the property to a third person is estopped from thereafter asserting his or her estate or interest to the prejudice of the transferee unless it appears that the latter had notice, either actual or constructive, of the real ownership of the title.[1] Where one person knowingly, although he or she does it passively by looking on, suffers another to purchase and expend money on land under an erroneous opinion of title, without making known his or her claim, he or she is not afterwards permitted to exercise his or her legal right against such person.[2]

When the nondisclosure of one's interest is tantamount to fraud, actual or constructive, as is usually the case when the owner of land knowingly permits his or her property to be mortgaged, sold, or transferred by another to one who is, to the owner's knowledge, relying on the apparent ownership of the person executing the conveyance, such conduct ordinarily estops the owner from asserting his or her title against the mortgagee, grantee, or transferee.[3]

Observation:

Estoppel by conduct, under a statute providing that one who silently stands by and permits another to purchase his or her property, without disclosing his or her title, is guilty of such a fraud as estops him or her from subsequently setting up such title against the

purchaser, operates only in favor of a bona fide purchaser without notice, and the statute is not applicable where a party had actual knowledge of the rights of the other party who remained silent.[4]

Footnotes

1 Reichert v. Reichert, 77 S.D. 258, 90 N.W.2d 403 (1958); State By and Through Road Commission v. Valentine, 10 Utah 2d 132, 349 P.2d 321 (1960).

2 Pardue v. Citizens Bank & Trust Co., 287 Ala. 50, 247 So. 2d 368 (1971).

3 Strangi v. Wilson, 223 Miss. 122, 77 So. 2d 697 (1955); McDaniel v. Leggett, 224 N.C. 806, 32 S.E.2d 602 (1945).

4 Montgomery v. Barrow, 286 Ga. 896, 692 S.E.2d 351 (2010).

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§ 84. Fraud

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West's Key Number Digest

West's Key Number Digest, Estoppel 101

Generally, the estoppel of one who is not a party to a transaction involving real property, by his or her failure to disclose his or her interest in the property, is based upon the broad principle that when one by his or her words or conduct willfully causes another to believe the existence of a certain state of things, and induces that person to act on that belief, so as to alter his or her previous position, the former is concluded from thereafter claiming against the latter a different state of things.[1]

More specifically, this kind of conduct is ordinarily treated as a fraud, actual or constructive.[2] The basis of this principle is the familiar equitable tenet that in equity, when a person has been silent when, in conscience, he or she should have spoken, such person is debarred from speaking when conscience requires him or her to be silent.[3]

Although fraud is not an essential element of the original conduct working the estoppel, it would be fraudulent for the party to repudiate his or her conduct and to assert a right or claim in contravention thereafter.[4] This rule rests upon the ground that the circumstances raise a duty to speak, and the failure to do so is either a fraud or works such an injury as is equivalent to a fraud if the party is not estopped.[5]

Footnotes

1 Friedman v. Olson, 586 S.W.2d 957 (Tex. Civ. App. Eastland 1979), writ refused n.r.e., (Apr. 2, 1980).

2 Boise-Payette Lumber Co. v. Bickel, 42 Idaho 245, 245 P. 92, 45 A.L.R. 575 (1926).
As to the distinction between actual and constructive fraud, see Am. Jur. 2d, Fraud and Deceit §§ 8, 9.

3 H.W. Wright Lumber Co. v. McCord, 145 Wis. 93, 128 N.W. 873 (1910).

4 Treadwell v. Henderson, 58 N.M. 230, 269 P.2d 1108 (1954).

5 U.S. v. Georgia-Pacific Co., 421 F.2d 92 (9th Cir. 1970); Hanika v. Rawley, 220 Neb. 45, 368 N.W.2d 32 (1985).

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Part One. Estoppel

III. Equitable Estoppel or Estoppel in Pais

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2. Estoppel by Silence or Nondisclosure of Interest

a. In General

§ 85. Implied representation; ostensible authority

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Estoppel 101

The application of the estoppel of one not a party to a transaction involving real property, because of his or her failure to disclose his or her interest in the property, to later assert an interest therein, is by some courts predicated on a basis of implied representation.[1]

Similarly, some courts hold that silence is a specie of conduct and constitutes an implied representation of the existence of the state of facts in question, so the estoppel arising is, accordingly, a specie of estoppel by misrepresentation.[2]

The nondisclosure of title is sometimes held to be the reason to preclude a landowner from asserting his or her rights on the ground that he or she has, by reason of his or her silence, held out another person as having the authority to dispose of his or her property.[3] When the true owner of property holds out another, or allows him or her to appear, as the owner of, or as having full power of disposition over, the property, and innocent third parties are thus led into dealing with this apparent owner, they will be protected since their rights in such cases do not depend upon the actual title or authority of the party with whom they have directly dealt but they are derived from the act of the real owner, which precludes him or her from disputing, as against such third party, the existence of the right or power that he or she caused, or allowed, to appear to be vested in the party making the sale.[4]

Footnotes

1 Palmer v. Welch, 171 Mo. App. 580, 154 S.W. 433 (1913).

2 Milburn v. Michel, 137 Md. 415, 112 A. 581 (1921).

3 Reichert v. Reichert, 77 S.D. 258, 90 N.W.2d 403 (1958).
As to an agent's authority by estoppel, see Am. Jur. 2d, Agency §§ 17, 79.

4 Sullivan v. Moore, 84 S.C. 426, 65 S.E. 108 (1909).

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§ 86. Consent or acquiescence

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West's Key Number Digest

West's Key Number Digest, Estoppel 101

Some authorities have expressed the view that the estoppel of one not a party to a transaction involving real property, by his or her failure to disclose his or her interest in the property, to afterwards assert an interest therein, is predicated upon the theory of acquiescence.[1] Accordingly, where a husband and wife owned property as tenants by the entirety but the husband alone leased the property for five years with the right to renew for five-year periods thereafter, and the parties to the lease renewed the lease for five successive terms with the knowledge of the wife, who was aware of her ownership of the property, the wife is deemed to have acquiesced in the conduct of her husband and is therefore estopped from denying the validity of the lease.[2]

Acquiescence consisting of silence operates as an estoppel in equity to preclude a party from asserting the legal title to and rights in the property.[3]

Footnotes

1 Heckman v. Davis, 1916 OK 243, 56 Okla. 483, 155 P. 1170 (1916); Hustis v. McWilliams, 175 Wis. 365, 185 N.W. 159 (1921).

2 Gleason v. Tompkins, 84 Misc. 2d 174, 375 N.Y.S.2d 247 (Sup 1975).

3 Rodgers v. John, 131 Md. 455, 102 A. 549 (1917); Central Bank & Trust Co. v. Wyatt, 191 N.C. 133, 131 S.E. 311 (1926).

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§ 87. Additional theories on which estoppel is predicated

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Estoppel 101

In many cases, the preclusion of a party from the assertion of his or her rights in a real property that were undisclosed while transactions relating thereto were conducted between third persons is predicated on the theory that the silence justifies an inference of a waiver of the right concealed and, as a result of that waiver, creates an estoppel against the assertion of the right[1] although, strictly speaking, waiver and estoppel are entirely distinct concepts.[2]

Some authorities predicate the preclusion of a party from the assertion of his or her rights in real property, which were undisclosed while transactions pertaining thereto were entered into between third persons on the theory of ratification.[3] Ratification, or election by acceptance of benefits, arises when a party, knowing that he or she is not bound by a proceeding and is free to repudiate it if he or she wishes, upon knowledge and while under no disability, adopts the proceeding as his or her own.[4]

An estoppel based on the nondisclosure of an interest in real property, although a transaction pertaining thereto was carried on by third persons, has been considered an equitable abandonment of the claim a kind of perpetual disclaimer.[5]

In some circumstances, an estoppel may be predicated on the ground of negligence.[6]

In some cases, laches or a want of diligence in regard to taking steps appropriate for the assertion of the right in question serve as the predicate for asserting an estoppel.[7]

Observation:

In some jurisdictions, whenever the circumstances justify predicating the preclusion to raise a claim both on the ground of a standing by in silence and on the ground of laches, it is deduced from two distinct and mutually corroborative elements. There is no difficulty in segregating these elements and allowing for their cumulative operation when the evidence applicable to one of them has reference to the time when the transaction in question was consummated and the evidence applicable to the other has reference to a subsequent period.[8]

In other cases, the inability of a party to assert his or her rights in real property, which were undisclosed while the transactions pertaining it were carried on between third persons, is predicated on the theory that when one of two innocent persons must suffer, he or she must suffer who by his or her own acts occasioned the confidence and the loss.[9]

Footnotes

1 Battery Park Bank v. Western Carolina Bank, 138 N.C. 467, 50 S.E. 848 (1905); Group v. Jones, 1914 OK 352, 44 Okla. 344, 144 P. 377 (1914).

2 § 29.

3 Hector v. Mann, 225 Mo. 228, 124 S.W. 1109 (1910); Patterson's Ex'rs v. Patterson, 144 Va. 113, 131 S.E. 217 (1926).

4 Hampshire County Trust Co. of North Hampton, Mass. v. Stevenson, 114 Ohio St. 1, 4 Ohio L. Abs. 74, 150 N.E. 726 (1926).

5 Cotton v. Horton, 22 N.D. 1, 132 N.W. 225 (1911).

6 Barron v. Federal Land Bank of New Orleans, 182 Miss. 50, 180 So. 74 (1938); Marshall v. McDermitt, 79 W. Va. 245, 90 S.E. 830 (1916).
For a discussion of negligence so gross as to amount to constructive fraud giving rise to an estoppel to assert an undisclosed interest in real property, see § 84.

7 Oliver v. Ross, 289 Ill. 624, 124 N.E. 800 (1919); St. Denis v. Mullen, 157 Minn. 266, 196 N.W. 258 (1923).

8 Estep v. Kentland Coal & Coke Co., 239 F. 617 (C.C.A. 6th Cir. 1917); Withers v. Kansas City Suburban Belt R. Co., 226 Mo. 373, 126 S.W. 432 (1910).

9 Allen v. Powell, 65 Ind. App. 601, 115 N.E. 96 (1917); State Bank of Cooperstown v. Newell, 55 N.D. 184, 212 N.W. 848 (1927).
As to the similar "clean hands" principle of equity, see Am. Jur. 2d, Equity § 98.

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§ 88. Effect of statute of frauds

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West's Key Number Digest

West's Key Number Digest, Estoppel 101

Although the necessary effect of an estoppel is to supersede pro tanto the operation of the statute of frauds, insofar as those laws require written evidence to prove contracts respecting the disposition of real-estate interests, objections to the estoppel on this ground have been denied.[1]

Footnotes

1 Pardue v. Citizens Bank & Trust Co., 287 Ala. 50, 247 So. 2d 368 (1971); Poksyla v. Sundholm, 259 Minn. 125, 106 N.W.2d 202 (1960); Jefferson Sav. & Loan Ass'n v. Aguado, 425 S.W.2d 200 (Mo. 1968).

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Research References

West's Key Number Digest

West's Key Number Digest, Estoppel 52.10(1), 52.10(2)

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A.L.R. Index, Estoppel and Waiver
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Forms

Am. Jur. Legal Forms 2d § 102:15

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VI. In General

§ 183. Generally; definitions and nature

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Estoppel 52.10(1), 52.10(2)

A.L.R. Library

Liability insurance: clause with respect to notice of accident or claim, etc., or with respect to forwarding suit papers, 18 A.L.R.2d 443 (secs. 24-26 superseded in part by Modern status of rules requiring liability insurer to show prejudice to escape liability because of insured's failure or delay in giving notice of accident or claim, or in forwarding suit papers, 32 A.L.R.4th 141)

A "waiver," according to the generally accepted definition, is the voluntary and intentional relinquishment of a known right,[1] advantage,[2] benefit,[3] claim,[4] or privilege.[5] "Waiver" is the voluntary abandonment or surrender by a capable person of a right known to him or her to exist with the intent of forever depriving him or her of the benefits of the right.[6] Waiver is based upon a species of the principle of estoppel, and where applicable, it will be enforced as the estoppel would be enforced.[7] However, the doctrines of waiver and equitable estoppel are separate and distinct.[8]

Observation:

Waiver arises from an affirmative act and is consensual.[9] It involves the idea of assent, and assent is an act of understanding.[10]

Waiver is essentially unilateral in its character, and no act of the party in whose favor it is made is necessary to complete it.[11]

Ordinarily, to establish a waiver of a legal right, there must be a clear, unequivocal, and decisive act of a party showing such a purpose.[12]

Waiver is an equitable doctrine invoked to further the interests of justice[13] and is in all cases a discretionary doctrine.[14] Waiver is not a cause of action because it cannot create liability in and of itself,[15] and a cause of action cannot be based on a waiver.[16] It follows that a waiver is defensive in nature and operates to prevent the loss of existing rights.[17]

A limited waiver, by its terms, will limit or specify the period to which it applies.[18]

CUMULATIVE SUPPLEMENT

Cases:

To constitute a waiver of a legal right under Pennsylvania law, there must be a clear, unequivocal and decisive act of the party with knowledge of such right and an evident purpose to surrender it. Harvey v. Liberty Mut. Group, Inc., 8 F. Supp. 3d 666 (E.D. Pa. 2014).

"Waiver" is the intentional relinquishment or abandonment of a known right. Wood v. Milyard, 132 S. Ct. 1826 (2012).

To prove waiver under Texas law, party must show: (1) existing right, benefit, or advantage; (2) knowledge, actual or constructive, of its existence; and (3) actual intent to relinquish that right, which can be inferred from conduct. Richardson v. Wells Fargo Bank, N.A., 873 F. Supp. 2d 800 (N.D. Tex. 2012).

Because waiver is not favored under the law, the evidence relied upon to prove a waiver must be so clearly indicative of an intent to relinquish a then known particular right or benefit as to exclude any other reasonable explanation. Bates v. Howell, 352 Ga. App. 733, 835 S.E.2d 814 (2019).

[END OF SUPPLEMENT]

Footnotes

1 Barker v. Wingo, 407 U.S. 514, 92 S. Ct. 2182, 33 L. Ed. 2d 101 (1972); Hughes v. Mitchell Co., Inc., 49 So. 3d 192 (Ala. 2010); State v. Jefferson, 114 Conn. App. 566, 970 A.2d 797 (2009), certification denied, 292 Conn. 921, 974 A.2d 722 (2009); Blanton v. State, 978 So. 2d 149 (Fla. 2008); People v. Phipps, 238 Ill. 2d 54, 342 Ill. Dec. 893, 933 N.E.2d 1186 (2010); Blue Star Corp. v. Ckf Properties, LLC, 2009 ME 101, 980 A.2d 1270 (Me. 2009); Com. v. Lucarelli, 601 Pa. 185, 971 A.2d 1173 (2009).

2 Hughes v. Mitchell Co., Inc., 49 So. 3d 192 (Ala. 2010); Stoddard v. Hagadone Corp., 147 Idaho 186, 207 P.3d 162 (2009); Sanders v. Gravel Products, Inc., 2008 ND 161, 755 N.W.2d 826 (N.D. 2008).

3 Hughes v. Mitchell Co., Inc., 49 So. 3d 192 (Ala. 2010).

4 McKay v. Wilderness Development, LLC, 2009 MT 410, 353 Mont. 471, 221 P.3d 1184 (2009); Sanders v. Gravel Products, Inc., 2008 ND 161, 755 N.W.2d 826 (N.D. 2008).

5 Blanton v. State, 978 So. 2d 149 (Fla. 2008); Sanders v. Gravel Products, Inc., 2008 ND 161, 755 N.W.2d 826 (N.D. 2008); State v. Steen, 346 Or. 143, 206 P.3d 614 (2009).

6 City of Ft. Smith v. McCutchen, 372 Ark. 541, 279 S.W.3d 78 (2008).

7 C.R. Klewin Northeast, LLC v. City of Bridgeport, 282 Conn. 54, 919 A.2d 1002 (2007).

8 Glidden Co. v. Lumbermens Mut. Cas. Co., 112 Ohio St. 3d 470, 2006-Ohio-6553, 861 N.E.2d 109 (2006).

9 Gallagher v. Lenart, 226 Ill. 2d 208, 314 Ill. Dec. 133, 874 N.E.2d 43 (2007).

10 State v. Hampton, 293 Conn. 435, 988 A.2d 167 (2009).

11 Valspar Refinish, Inc. v. Gaylord's, Inc., 764 N.W.2d 359, 68 U.C.C. Rep. Serv. 2d 567 (Minn. 2009); Perry Homes v. Cull, 258 S.W.3d 580 (Tex. 2008), cert. denied, 129 S. Ct. 952, 173 L. Ed. 2d 116 (2009).

12 D & S Realty, Inc. v. Markel Ins. Co., 280 Neb. 567, 789 N.W.2d 1 (2010); Commonwealth ex rel. Pennsylvania Attorney General Corbett v. Griffin, 596 Pa. 549, 946 A.2d 668 (2008).

13 In re Air Crash Disaster at Sioux City, Iowa on July 19, 1989, 259 Ill. App. 3d 231, 197 Ill. Dec. 843, 631 N.E.2d 1302 (1st Dist. 1994).

Waiver is a limitation on the parties, not on the court, and thus, in the interest of justice, a court may consider an issue that a party has waived. Zaabel v. Konetski, 209 Ill. 2d 127, 282 Ill. Dec. 748, 807 N.E.2d 372 (2004).

14 McKnight v. Gingras, 966 F. Supp. 801 (E.D. Wis. 1997).

15 Keightley v. Republic Ins. Co., 946 S.W.2d 124 (Tex. App. Austin 1997), judgment withdrawn on other grounds by, 1997 WL 420787 (Tex. App. Austin 1997).

16 Harasyn v. St. Paul Guardian Ins. Co., 349 Ark. 9, 75 S.W.3d 696 (2002).

17 Hruska v. First State Bank of Deanville, 747 S.W.2d 783 (Tex. 1988).

18 Heinrich Schepers GMBH & CO., KG v. Whitaker, 280 Va. 507, 702 S.E.2d 573 (2010).

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VI. In General

§ 184. Waiver distinguished

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Estoppel 52.10(1), 52.10(2)

Waiver can be distinguished from certain other legal theories.[1] For example, waiver is different from forfeiture, and although cases sometimes use the words interchangeably, they embody very different legal concepts[2] in that a forfeiture is a failure to make a timely assertion of a right while a waiver is the intentional relinquishment or abandonment of a known right.[3] Further, forfeiture applies to issues that could have been raised but were not while waiver is the voluntary relinquishment of a known right.[4]

Observation:

The characterizations of "waiver" as the voluntary relinquishment of a known right, and "forfeiture" as the failure to timely comply with procedural requirements, apply equally to criminal and civil matters.[5]

The doctrine of election of rights, pursuant to which a party's election to perform regardless of when a contractual defect executes the contract and binds that party, is not to be confused with the concept of waiver since an "election" is effective even though there is no intent to relinquish the other inconsistent right.[6]

CUMULATIVE SUPPLEMENT

Cases:

The terms waiver and forfeiture, though often used interchangeably by jurists and litigants, are not synonymous, because "forfeiture" is the failure to make the timely assertion of a right, while "waiver" is the intentional relinquishment or abandonment of a known right. Hamer v. Neighborhood Housing Services of Chicago, 138 S. Ct. 13 (2017).

In contrast to forfeiture, waiver typically applies to those rights so important to the administration of a fair trial that mere inaction on the part of a litigant is not sufficient to demonstrate that the party intended to forego the right. State v. Soto, 2012 WI 93, 817 N.W.2d 848 (Wis. 2012).

[END OF SUPPLEMENT]

Footnotes

1 As to the distinction between waiver and estoppel, see § 35.

2 Schill v. Wisconsin Rapids School Dist., 2010 WI 86, 327 Wis. 2d 572, 786 N.W.2d 177, 258 Ed. Law Rep. 735 (2010).

3 U.S. v. Olano, 507 U.S. 725, 113 S. Ct. 1770, 123 L. Ed. 2d 508 (1993); Keener v. Jeld-Wen, Inc., 46 Cal. 4th 247, 92 Cal. Rptr. 3d 862, 206 P.3d 403 (2009); Schill v. Wisconsin Rapids School Dist., 2010 WI 86, 327 Wis. 2d 572, 786 N.W.2d 177, 258 Ed. Law Rep. 735 (2010).

4 People v. Phipps, 238 Ill. 2d 54, 342 Ill. Dec. 893, 933 N.E.2d 1186 (2010).

5 Buenz v. Frontline Transp. Co., 227 Ill. 2d 302, 317 Ill. Dec. 645, 882 N.E.2d 525 (2008).

6 Gaugert v. Duve, 217 Wis. 2d 164, 579 N.W.2d 746 (Ct. App. 1998).

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VI. In General

§ 185. Who may waive; power or authority to waive

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Estoppel 52.10(1), 52.10(2)

Forms

Am. Jur. Legal Forms 2d § 102:15 (Waiver by corporation to be in writing)

Rights or privileges may be waived by the person for whose benefit they were intended[1] and whose rights or remedies are to be affected[2] provided that the person is of full age and sui juris,[3] or by the person's duly authorized agent,[4] or anyone else whom the law empowers to act in the person's behalf.[5] A personal representative or heir may waive some rights, such as confidential communications between a client, since deceased, and his or her attorney,[6] or, under the prevailing view, confidential disclosures by a patient, since deceased, to his or her physician,[7] and in many jurisdictions, a personal representative may waive the statute of limitations as to a debt barred thereby.[8] However, a next friend or guardian may not ordinarily waive the rights of an infant,[9] and no one, including a general committee or guardian, may waive the substantial rights of an insane litigant.[10] The holder of a primary cause of action cannot waive rights held by persons bringing derivative actions, such as, for example, where a spouse bringing a negligence action settles the action and executes a release, a spouse suing for loss of consortium, which is a derivative action, is not bound by the release.[11]

Caution:

One defendant's motion cannot, by itself, work another defendant's knowing waiver of a privilege.[12]

The United States or a State,[13] or, in some instances at least, a political subdivision of a State,[14] may waive its rights. However, public officers have no power or authority to waive the enforcement of the law on behalf of the public, and their acts in this respect are not binding on the public.[15]

Footnotes

1 Chirac v. Reinicker, 24 U.S. 280, 6 L. Ed. 474, 1826 WL 2644 (1826).

2 Matter of S.L., 599 N.E.2d 227 (Ind. Ct. App. 1992).

3 Potter v. Fahs, 167 F.2d 641 (C.C.A. 5th Cir. 1948).

4 Campbell v. Clark & Melia, 150 Pa. Super. 635, 29 A.2d 350 (1942).
As to authority of agent to waive conditions, generally, see Am. Jur. 2d, Agency § 88.

5 Davison v. Klaess, 280 N.Y. 252, 20 N.E.2d 744 (1939); Voelker v. Joseph, 62 Wash. 2d 429, 383 P.2d 301 (1963).

6 Am. Jur. 2d, Witnesses § 335.

7 Am. Jur. 2d, Witnesses § 476.

8 Am. Jur. 2d, Executors and Administrators §§ 653 et seq.

9 Am. Jur. 2d, Guardian and Ward § 117; Am. Jur. 2d, Infants § 171.
The nature of the waiver agreed to by a parent on behalf of a child, namely, whether it concerns the waiver of a legal claim or right, or the waiver of the forum in which the claim is presented, is a crucial consideration in determining whether the State's interest in protecting children renders the waiver unenforceable. Global Travel Marketing, Inc. v. Shea, 908 So. 2d 392 (Fla. 2005).

10 Knight v. Moore, 396 So. 2d 31 (Miss. 1981).

11 Brown v. Metzger, 118 Ill. App. 3d 855, 74 Ill. Dec. 405, 455 N.E.2d 834 (2d Dist. 1983), judgment aff'd, 104 Ill. 2d 30, 83 Ill. Dec. 344, 470 N.E.2d 302, 60 A.L.R.4th 1165 (1984).

12 U.S. v. Wilson, 26 F.3d 142 (D.C. Cir. 1994).

13 Am. Jur. 2d, States, Territories, and Dependencies §§ 115 et seq. (waiver of immunity from suit); Am. Jur. 2d, United States §§ 65 et seq. (waiver of exemption from suit).

14 City of Pueblo v. Grand Carniolian Slovenian Catholic Union of U. S. of America, 145 Colo. 6, 358 P.2d 13 (1960); City of Jacksonville v. General Telephone Co. of the Southwest, 538 S.W.2d 253 (Tex. Civ. App. Tyler 1976), writ refused n.r.e., (Oct. 6, 1976).

15 Town of Hempstead v. Goldblatt, 19 Misc. 2d 176, 189 N.Y.S.2d 577 (Sup 1959), aff'd, 9 A.D.2d 941, 196 N.Y.S.2d 573 (2d Dep't 1959), aff'd, 9 N.Y.2d 101, 211 N.Y.S.2d 185, 172 N.E.2d 562 (1961), judgment aff'd, 369 U.S. 590, 82 S. Ct. 987, 8 L. Ed. 2d 130 (1962).

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Part Two. Waiver

VI. In General

§ 186. Operation and effect

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Estoppel 52.10(1), 52.10(2)

Ordinarily, a waiver operates to preclude a subsequent assertion of the right waived or any claim based thereon.[1] It is well settled that a waiver once made is irrevocable even in the absence of consideration or of any change in position of the party in whose favor the waiver operates.[2] However, a party that intentionally relinquishes a known right can reclaim the right with the consent of the adversary party.[3] When a party engages in activity that clearly constitutes waiver, the party cannot later claim that it did not know that its actions amounted to a voluntary and intentional waiver of its rights as a party who consents to an act is not wronged by it,[4] nor may a party plead willful ignorance and escape a waiver.[5] However, a waiver can be retracted at any time before the other party has materially changed position in reliance on the waiver.[6]

Caution:

Waiver of a right does not always extinguish the right but may, instead, merely result in limitations upon the right's subsequent reassertions.[7]

A waiver is of conclusive effect as concerns the party effecting the waiver and the privies of such party.[8] Where parties for whose benefit conditions have been imposed elect to waive such conditions, strangers are not in a position, and have no right, to complain.[9]

A waiver does not create a new right or privilege but merely operates in respect of an existing one.[10] The waiver of a provision of a contract is in effect a modification of the contract.[11] Further, while a waiver may operate to preclude the repudiation of a contract, it cannot create a contract.[12] Generally, the principle of waiver is inoperable to extend insurance coverage beyond the terms of an insurance contract.[13]

Footnotes

1 Shapiro v. Leslie Fay Corp., 138 N.Y.S.2d 606 (Sup 1954).

2 U.S. Fidelity & Guar. Co. v. Miller, 237 Ky. 43, 34 S.W.2d 938, 76 A.L.R. 12 (1931); Engstrom v. Farmers & Bankers Life Ins. Co., 230 Minn. 308, 41 N.W.2d 422 (1950).
When a right is waived, the right is gone forever and cannot be recalled. Bernhardt v. Harrington, 2009 ND 189, 775 N.W.2d 682 (N.D. 2009).

3 Jenkins v. Indemnity Ins. Co. of North America, 152 Conn. 249, 205 A.2d 780 (1964); White River Estates v. Hiltbruner, 84 Wash. App. 352, 928 P.2d 440 (Div. 1 1996), rev'd in part on other grounds, 134 Wash. 2d 761, 953 P.2d 796 (1998).

4 Lawrence v. Delkamp, 2006 ND 257, 725 N.W.2d 211 (N.D. 2006).

5 BancBoston Mortg. Corp. v. Harbor Estates Partnership, 768 F. Supp. 170 (W.D. N.C. 1991).

6 Max 327, Inc. v. City of Portland, 115 Or. App. 342, 838 P.2d 631 (1992).

7 Marquez v. State, 921 S.W.2d 217 (Tex. Crim. App. 1996).

8 Torgerson v. Hauge, 34 N.D. 646, 159 N.W. 6, 3 A.L.R. 164 (1916).

9 Landers-Morrison-Christenson Co. v. Ambassador Holding Co., 171 Minn. 445, 214 N.W. 503, 53 A.L.R. 573 (1927).

10 Continental Cas. Co. v. Bock, 340 S.W.2d 527 (Tex. Civ. App. Houston 1960), writ refused n.r.e., (Feb. 22, 1961).

11 Bosoian v. Hubbard, 121 A.D. 510, 106 N.Y.S. 178 (2d Dep't 1907).
As to waiver of contract provisions or conditions, generally, see Am. Jur. 2d, Contracts §§ 1 et seq.

12 Carolina Amusement Co., Inc. v. Connecticut Nat. Life Ins. Co., 313 S.C. 215, 437 S.E.2d 122 (Ct. App. 1993).

13 Marlin v. Wetzel County Bd. of Educ., 212 W. Va. 215, 569 S.E.2d 462 (2002).

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